

# AUTO REPAIR FRAUD

Y 4. C 73/7: S. HRG. 103-27

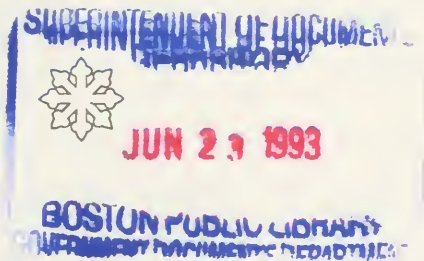
Auto Repair Fraud, S.Hrg. 103-27, 1...

HEARING  
 BEFORE THE  
 SUBCOMMITTEE ON CONSUMER  
 OF THE  
 COMMITTEE ON COMMERCE,  
 SCIENCE, AND TRANSPORTATION  
 UNITED STATES SENATE  
 ONE HUNDRED THIRD CONGRESS

FIRST SESSION

MARCH 4, 1993

Printed for the use of the Committee on Commerce, Science, and Transportation



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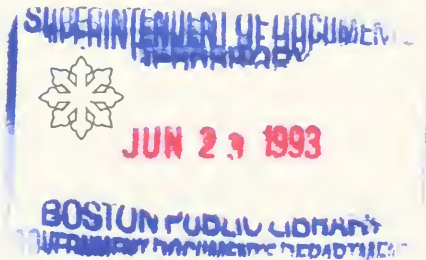
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UNITED STATES SENATE  
COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION

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# AUTO REPAIR FRAUD

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THURSDAY, MARCH 4, 1993

U.S. SENATE  
SUBCOMMITTEE ON CONSUMER OF THE  
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,  
*Washington, DC.*

The subcommittee met, pursuant to notice, at 9:35 a.m. in room SR-253, Russell Senate Office Building, Hon. Richard H. Bryan (chairman of the subcommittee) presiding.

Staff members assigned to this hearing: Claudia A. Simons, staff counsel, and Moses Boyd, senior counsel; and Sherman Joyce, minority staff counsel.

## OPENING STATEMENT OF SENATOR BRYAN

Senator BRYAN. As chairman of the Commerce Committee's Consumer Subcommittee, I take this opportunity to welcome each of you here for this morning's testimony and hearing. The committee today will continue its examination of automobile repair fraud by reviewing the progress that has been made to improve the situation.

Last summer, the charges brought against Sears highlighted many of the problems that consumers confront in taking their cars in for automotive repairs. Serious questions were raised regarding the pervasiveness of automobile repair fraud in America.

In July of last year, I chaired a hearing to explore the nature and extent of such fraud, and to discuss possible solutions. Some of the testimony was quite disturbing, as we learned the apparently widespread nature of auto repair fraud, be it unnecessary repairs, defective repairs, overcharges, deceptive and misleading advertising, or the use of accelerated maintenance schedules that more subtly defraud consumers. Particularly troublesome are the service writer compensation programs.

At the conclusion of that hearing, the ranking member of this subcommittee, Senator Gorton, and I requested that the Federal Trade Commission commence an investigation into the auto repair industry.

The problems of automobile repair fraud are national in scope. The Sears case alone resulted in actions by 43 different States. I look forward to hearing from the Federal Trade Commission this morning to learn of the information that they have developed during the course of their renewed activity in this field.

Also following the committee's hearing of last year, the National Associations of Attorneys General established an automotive repair task force to examine the issue from the State perspective and to

coordinate enforcement efforts. As part of the settlement with Sears, the National Association of Attorneys General received \$200,000 to create an automotive repair industry reform fund.

The task force will be disbursing the funds, which will be used in part to fund individual State undercover sting operations, and we look forward to hearing the testimony this morning of two of America's most distinguished attorneys general who join us.

Given the sophisticated equipment in most automobiles today, it is no wonder that consumers find themselves at the mercy of auto repair shops, and are often left wondering whether the \$500 they just spent for repairs was necessary, or was it just money that was wasted?

Even if a given repair was necessary, questions often linger over whether the repair was properly performed, and whether, indeed, the repair will last for a period of time.

Because of this situation, undercover sting operations are one of the most effective methods for discovering abusive practices and are extremely useful for their deterrent effect.

While it is clear that the routine trip to the auto repair shop is every consumer's nightmare, it is less clear how to remedy the situation. Fortunately, it appears that progress has been made and continues to be made since our hearing last year.

I must note that, despite an invitation to Sears to participate in these hearings so that we might have a follow-on with the dialog that we engaged them with last July, they failed to appear in response to our question, and I would hope that that does not indicate a lack of cooperation on their part, as they were specifically invited to appear and to respond to some of the questions that we had in a colloquy with a couple of their witnesses last July.

I look forward to our hearing this morning, and to hear from our very distinguished panel. I think it may be appropriate, however, to lead this segment off by introducing some television tape that was done by a television station in Las Vegas, an ABC affiliate, KTNV.

Why do not we crank that up, because although this occurred in Las Vegas, it could have occurred in any city in America. I think this will set the stage for our discussion, and then we will introduce our witnesses and invite them to testify.

[A videotape was shown.]

Ms. MCCARTHY. It is the single most common complaint on our Contact 13 hotline. With few laws to protect the consumer, car owners are bilked out of thousands of dollars for unnecessary repairs, shoddy work, and sky-high prices. Tonight, Contact 13 goes undercover to expose the auto repair nightmare in our special report, "Tune-up Terror."

VOICE. You get ripped off every time.

VOICE. I am frustrated because I have been taken for my time, I have been taken for my money—

VOICE. It is thievery, I mean, to a degree.

VOICE. Once again they thought that, being a woman, and probably because I was blonde, I did not know anything.

VOICE. Well, \$550 labor, I would say that is a gross overcharge.

Ms. MCCARTHY. Hundreds of hood horror stories. Different victims, but the same scenario.

VOICE. After the third repair—

Ms. MCCARTHY. For Jean Philips, it was a tune-up master disaster.



Ms. PHILIPS. They advertised a \$49.99 tune-up, and as soon as you take it in for a tune-up, something else is wrong with your car, something else is wrong with your car, and my car was running fine.

Ms. MCCARTHY. \$114 for the first repair, \$151 for the second repair, \$121 for a third repair, and after all that, the car's engine blew up on the ride home from the repair shop.

Ms. PHILIPS. The smoke was billowing out, and all of the oil ran out all over the place.

VOICE. You take your car in, you expect them to do a decent job, and you pay them for it.

Ms. MCCARTHY. Bill Sheehy took his car in for an oil change. How is this for an oil change? They forgot the oil. The car's engine froze up 4 miles down the road. He had to pay another shop to rebuild it.

VOICE. \$2,418.15.

Mr. SHEEHY. See, right there—no oil in the engine.

VOICE. What is a poor girl supposed to do?

Ms. MCCARTHY. Ann Porter is the victim of yet another auto repair nightmare. She paid for a new part and repair she never got.

VOICE. If you ask them for a part, how can you be sure that the part they are giving you is the part that came out of your car?

Ms. MCCARTHY. Contact 13 received hundreds of letters from angry and frustrated car owners, each one detailing their own auto repair nightmare, so to get to the bottom of this problem, Contact 13 hits the streets. We go undercover and under the hood to expose some of the most common auto repair pitfalls. We begin tonight with reporter Steve Crupi, who focuses on the infamous overcharge.

Mr. CRUPI. We took a 1988 Chevy Beretta and had a team of GM mechanics make sure the car was in tip-top condition. Then, we intentionally ripped a hole in the vacuum hose that attaches to an engine sensor.

What kind of a repair job is that?

VOICE. The total job should not take any more than an hour. It could be done within 20 to 30 minutes.

Mr. CRUPI. Cost factor.

VOICE. \$50 to \$100.

Mr. CRUPI. Cost.

VOICE. More like \$20 to \$50 would be a better idea.

Mr. CRUPI. So to fix the problem, all they have to do is replace that hose.

VOICE. Replace this hose.

Mr. CRUPI. A \$3 part.

VOICE. Yes, absolutely.

Mr. CRUPI. So to see if we could find a fair deal, we had a News 13 producer take the car to a variety of repair shops around time.

VOICE. Yes, I am having car problems. I would like an estimate.

Mr. CRUPI. At the very first shop we visited, they did not even open the hood before telling us that just getting an estimate would cost a car-load of money.

VOICE. The test runs about 4 hours.

VOICE. The test runs about 4 hours, and how much is it?

VOICE. \$130.

VOICE. That is \$130, and that is before any work is done on it.

VOICE. Right.

Mr. CRUPI. So before we had any repairs made at all, we have driven ourselves into a \$130 hole. Now, for the average car owner, it is just plain hard to tell. Are you getting a good deal, or are you getting the shaft? After our \$130 test, the mechanic recommended nearly another \$200 in repairs. He replaced the vacuum hose, plus a perfectly good computer sensor, leaving us with a total bill of \$315, a figure our mechanic just could not believe. So we just spent \$315 to put this on.

VOICE. For a 5-minute repair. Yes, absolutely, or a 10-minute repair.

Mr. CRUPI. Was it worth this much?

VOICE. Absolutely not.

Mr. CRUPI. So we confronted the shop owner for an explanation. Almost all this \$200 extra just to replace that part that did not need to be replaced.

VOICE. Well, that is a matter of opinion. My opinion is that it did need replacement.

Mr. CRUPI. And despite a sign that said, all parts sold at list price, we were charged two-and-a-half times the going rate.

VOICE. This is a fair deal and a fair price for what we did. We did this work.

Mr. CRUPI. But we checked around and could not find a single mechanic who thought we got a fair deal.

VOICE. Overcharging you there, too.

Mr. CRUPI. What you are saying is, there is really no way to be sure.

VOICE. No, there is not.

Mr. CRUPI. You are at the mercy of the mechanic.

VOICE. Yes. Pretty much, yes.

Ms. MCCARTHY. It is pretty amazing out there.

Mr. CRUPI. It really is, Alyson, and you are at the mercy of the mechanic unless you arm yourself with some knowledge, and later this week we will have some tips on how you can afford your own tune-up nightmare.

As for the repair shop in the piece you just saw, they did do a good job in fixing our car, but they probably did a lot more than we really needed. The owner says we should be thankful for that, but I am not so sure, when you consider we took that same car and that same problem to a number of other shops, and at one place getting it fixed cost us only \$29.

Ms. MCCARTHY. It would be nice if it were the car-owner's option. This is something coming up. Tomorrow night, Contact 13 goes back undercover with transmission troubles. Car owners are at the mercy of their mechanic, and it can be a frightening fate if there is a dishonest or incompetent mechanic under your hood.

To show you what we mean, Contact 13 goes back undercover tonight with transmission problems in part 2 of our special report, "Tune-up Terror."

VOICE. It would be very tempting for a mechanic to try to blow it out of proportion.

Ms. MCCARTHY. We wanted to see just how tempting it would be to turn a minor repair into major bucks, so we had our team of GM mechanics take a 1989 Toyota Camry with a perfectly good transmission, and we purposely disconnected a set of wires that would leave the car stuck in third gear.

VOICE. It is an obvious connection. It is at the transmission. It should not take you very long to find it and only a minute to plug it in.

Ms. MCCARTHY. So, top time.

VOICE. I think 20 minutes. Test drive 10, and 20 to find.

Ms. MCCARTHY. So that would be—

VOICE. \$25.

Ms. MCCARTHY. No part required.

VOICE. No part at all.

Ms. MCCARTHY. Once again, News 13 hit the streets in search of estimates.

VOICE. Is there any way I can get an estimate?

Ms. MCCARTHY. Even before lifting the hood or test-driving the car, this shop is certain the transmission will have to be replaced or rebuilt.

VOICE. That is probably \$1,600.

VOICE. And this is pretty much—that is—

VOICE. I would say, count on it.

VOICE. Count on it.

VOICE. Yep, about \$1,600.

VOICE. I was hoping it would be something real simple.

VOICE. No, they have had a problem with these here, and that is where it is.

Ms. MCCARTHY. Three more transmission shops turn up three more inflated estimates.

VOICE. You are going to get stuck anywhere you go. It does not make any difference. You are in a situation on this car.

Ms. MCCARTHY. So thinking that we would be stuck, we authorized the \$175 transmission inspection and we left the car at the shop.

Much to our surprise, the shop owner called us 10 minutes later. He had discovered the loose wire and reconnected it. The repair was free, along with this warning.

VOICE. You have got to be real, real careful in this town, to where you go. Somebody could have zapped you real fast, you know.

Ms. MCCARTHY. And that somebody was to be found at our next stop.

VOICE. The worst it could run is around \$700 to \$800.

Ms. MCCARTHY. Another sky-high estimate, so we left the car with the assurance of the shop manager that it would be ready the next day. 3½ days later, the repairs were finally finished, and we had a sneaky feeling we would be hosed.

VOICE. Now, what exactly did you have to do?

VOICE. We had to rebuild it. We will pull the car out front for you.

VOICE. Okay, thank you.

Ms. MCCARTHY. And keeping to the high end of their estimate, we drove away \$790 later, our mechanic standing by to let us know what we got for that money.

VOICE. I would say that is a gross overcharge.

Ms. MCCARTHY. So in other words, we are looking at a transmission that has in fact been overhauled.

VOICE. Yes.

Ms. MCCARTHY. But did not need to be.

VOICE. It did not need to be.

Ms. MCCARTHY. So we went back to the transmission shop for an explanation from the manager.

It is an obvious disconnection if you have to pull the transmission.

VOICE. That is right.

Ms. MCCARTHY. That is why we find it hard to believe that a mechanic would not notice that it is disconnected.

VOICE. Well, if it was disconnected, I had two different people work on it, it was just honest—we missed it. We just plain missed it.

Ms. MCCARTHY. \$800 for a mechanic to overlook this is way expensive for the car owner. What if we had not been here to catch it? She would be paying \$800 for a transmission that was perfectly good. This is what the investigation is all about.

VOICE. All I can do is apologize for that situation.

Ms. MCCARTHY. We got an apology and something most customers would not get—their money back.

VOICE. The consumer could have been down the road for no money or very little money, and which would you prefer? I would prefer the \$20 or \$40 bill and take my chances, considering that this transmission was absolutely fine.

Ms. MCCARTHY. And what you have seen here these last couple of nights is just a fraction of the tune-up terrors Steve Crupi and I have discovered during our investigation.

Mr. CRUPI. That is right, Alyson. Surely Las Vegas does have honest mechanics who do good work, but take a look at our statistics. During our whole experience we randomly selected ten repair shops, big and small, dealers and independents, and only two out of our ten encounters did we come away feeling like we got a fair deal. To me, that is an 80 percent rip-off rate. Is there any hope for the average car owner?

Well, Alyson, tomorrow that is the question we will try to answer. It is been quite an education.

Ms. MCCARTHY. A very expensive one, has not it, Steve?

Mr. CRUPI. Absolutely.

Ms. MCCARTHY. Thank you very much. John, in this week's special report, "Tune-up Terror," Contact 13 has gone undercover to capture on camera and microphone many of the pitfalls facing consumers needing car repairs. Tonight, we take a look at how car owners can protect themselves from the dishonest or incompetent mechanics out there. We begin by listening in on some of their high pressure sales and scare tactics.

VOICE. It is just costing you money every day. You could be blowing hundreds of dollars every time you start your car.

VOICE. And there is no chance that it is going to be something little.

VOICE. You have got a real problem when it comes to the transmission.

VOICE. \$375. How about \$1,800?

VOICE. Do not let yourself get suckered.

VOICE. I do not understand this ripping off of people. Why are not people honest anymore?

Ms. MCCARTHY. When Jean Philip's car engine blew up after a tune-up, she took her case to small claims court and won, but that is about the only recourse a car owner has against a bad mechanic.

VOICE. Knowledge, I think, is the best weapon against something like this.

Ms. MCCARTHY. And that is why Deborah Richards learned how to do her own tune-ups and brake jobs.

VOICE. I am baffled and somewhat ashamed when I come cross women who do not even know how to change a tire. This is the nineties. This is supposed to be the year of the woman. Let us do it.

Ms. MCCARTHY. Armed with the basics about car repair, Deborah knows enough to spot a rip-off in the making. She warns car-owners to avoid a coupon offering a low or no-cost service, because most mechanics work on commissions. Mechanics themselves admit there is a problem within the industry.

VOICE. What they will do is try to up-sell things that you do not need and they know you do not need to try to get their sales up and keep their business up.

VOICE. You can get caught up in the amount of work that you are doing, and you do not catch the details.

Ms. MCCARTHY. So how can the consumer protect themselves? Start by spending the time up front to shop around and save big bucks down the road.

VOICE. One good defense against overcharging would be to get second opinions. A lot of people do it with doctors. they do not seem to want to do it with automobiles.

Ms. MCCARTHY. Once your problems have been diagnosed, most of your work can be done over the telephone. Our estimates to repair this vacuum hose alone ranged from \$29 to \$315.

VOICE. In hard times, greed is a powerful weapon.

Ms. MCCARTHY. But even armed with knowledge, one thing we have learned is there is no guaranteed way to avoid a rip-off, especially if you do not have a hidden camera with you, but there are some rules to keep in mind.

Now, Steve Crupi is standing by live at a nearby repair shop with a checklist of the basics that every car owner should know. Steve.

Mr. CRUPI. Alyson, we are at Perfect Auto on South Decatur. It is one of only two shops we went to where we felt we did not get ripped off, but whether you come here or whether you go somewhere else, it is almost impossible to know what you are getting into or how much it is going to cost.

So straight away, right off the top, make sure you understand everything you are being told. Get an estimate, and get it in writing. Before you authorize anything beyond that estimate, make sure the mechanic gets your direct approval.

Before you have the work done, check around. At the very least, call around. Find out what other mechanics think of that estimate. Is it a rip-off, or isn't it? Other mechanics might have an opinion that is a little bit better than your own.

Also, before you go ahead and have that work done, talk to the mechanic. Tell him you want your old parts back. It may not guarantee that you will not be ripped off, but it will put the mechanic on the defensive. It will tell him that you are no idiot.

At one shop we went to, the repair man simply said he could not provide us with our old parts. That is a tip-off right away that something unusual is going on.

Also, a couple of the shops we went to, we got an estimate before the mechanic even looked under the hood. That should be another tip-off that something sneaky may be going.

Also, another important question to ask is, how much are they going to charge for those new parts? Some shops will charge you only list price. However, at a number of other shops we got stung for as much as two-and-a-half times list price.

So, Alyson, obviously, it is better to be armed with knowledge and a checklist of how to approach a car repair, rather than being an obvious victim.

Ms. MCCARTHY. We now know you are absolutely right. Thank you very much, Steve Crupi, reporting live for Contact 13.

[The video tape ended.]

Senator BRYAN. I think that piece pretty much puts it in perspective, in terms of the nature and diversity of the problem, although some of it appears a bit humorous, if that was your car that had just been blown up and your only means of transportation, and you are left with the alternative of getting another vehicle or bringing action against the repair garage that creates a major problem for you.

For the record, Senator Krueger has indicated that he will attempt to join us later, but he has some questions that he wants to submit for the record, and that will be done, and we will keep the record of this proceeding open for other members of the subcommittee who would like to submit written questions at a later point. Mr. Chairman, your comments, please.

### OPENING STATEMENT OF SENATOR HOLLINGS

The CHAIRMAN. I am pleased that the committee is holding this important hearing today, and I commend Senator Bryan for his efforts to keep the issue of automobile repair fraud under scrutiny. This issue continues to be one of the most common consumer complaints received by State and local consumer protection offices, the seriousness of which we all can appreciate.

Since the Consumer Subcommittee's hearing last July, I am pleased to learn of the actions that have been taken at both the Federal and State levels to address further automobile repair fraud. Specifically, I understand that the National Association of Attorneys General has formed an automotive repair task force to

examine the problem, and is being joined in that effort by the Federal Trade Commission and the American Automobile Association. I also understand that Sears, as part of its settlement with New Jersey last summer, has contributed \$200,000 to that task force, and has taken other steps to resolve the claims that were made against it.

These actions are important to send a strong message that business as usual in this area is no longer acceptable. I look forward to the testimony of the witnesses this morning, as the committee continues its examination of the issue of automobile repair fraud.

Thank you, Mr. Chairman.

Senator BRYAN. Thank you, Mr. Chairman. Senator Gorton.

#### OPENING STATEMENT OF SENATOR GORTON

Senator GORTON. Mr. Chairman, I would like to thank you for calling this hearing on automobile repair fraud today. The publicity last year surrounding allegations of impropriety by Sears Auto Centers in California focused attention on this issue. As former attorneys general, we both know that auto repair fraud is a serious problem, and it presents major problems to law enforcement officials.

Whether it is for family matters or to commute to work, most of us depend on a car every day. And, while new cars, domestic and foreign, have become more reliable and require less maintenance than older models, the fact is that cars break down and must be repaired. An individual who needs his car repaired promptly is susceptible to being charged for unnecessary repairs. Moreover, most consumers are not sufficiently knowledgeable to know when what a mechanic is recommending to them is an unnecessary repair.

Even if a consumer thinks he has been defrauded, it is virtually impossible to prove that a repair facility did anything improper once a repair has been made. State law enforcement efforts, using stings and inside informants, can identify wrongdoers, but these efforts are unlikely to lead to redress for consumers who have been defrauded.

Following last year's Consumer Subcommittee hearing on this issue, Mr. Chairman, you and I wrote to Federal Trade Commission Chairman Janet Steiger to ask the Commission to investigate what the appropriate role is for the Federal Government in this area. Today's witnesses will outline the scope of this problem, and what law enforcement officials can and should do about it.

Thank you.

Senator BRYAN. Thank you, Senator Gorton. I am pleased to welcome our first distinguished panel here to share with us their own point of view on this problem. We are joined by the Honorable Mary L. Azcuenaga, who is the Commissioner of the Federal Trade Commission; the Honorable Robert J. Del Tufo, who is the Attorney General for the State of New Jersey; and the Honorable Robert Abrams, the Attorney General for the State of New York.

Let us begin with the hearing from a national perspective, and let us hear from you, Ms. Azcuenaga. Welcome, and good morning to our hearing.

**STATEMENT OF MARY L. AZCUENAGA, COMMISSIONER,  
FEDERAL TRADE COMMISSION**

Ms. AZCUENAGA. Thank you, Mr. Chairman, and good morning. I am Mary Azcuenaga, Commissioner of the Federal Trade Commission, and I appreciate the opportunity to appear before the subcommittee today to discuss the work of the Federal Trade Commission in combating fraud in the automobile repair industry.

The written statement that I offer for the record represents the views of the Commission. Any other observations or answers to questions I might make are my own views, and do not necessarily reflect the views of the Commission, or any other Commissioner.

And, having given those disclosures and caveats, I would also like to say that I am especially pleased this morning to be appearing on the same panel with General Del Tufo of New Jersey, who is the National Association of Attorneys General Auto Repair Task Force Chairman; and with General Abrams of New York, with whom we have had a long, productive relationship.

With your permission, I will give a somewhat shorter version of the written statement.

Senator BRYAN. That would be fine, and your full text will be made a part of the record.

Ms. AZCUENAGA. Thank you, Mr. Chairman.

Last July, as you indicated, your subcommittee directed the Commission to investigate the practices of the automotive repair industry, and to report our findings to the subcommittee. You expressed a particular interest in how the FTC, and the Federal Government as a whole, might assist the State attorneys general in combating automobile repair fraud. We are engaged in a number of activities in this area, including law enforcement efforts, as well as coordination and liaison with the States. And I am pleased to provide you with a preliminary report on the Commission's activities.

Traditionally, the automotive repair industry has been licensed and regulated at the State and local level. Some States, for example, require auto repair facilities to give consumers a written statement estimating the cost of repairs, and also require the repair facilities to obtain further authorization from the consumer before proceeding with work not listed on the estimate or if the cost of the repair will exceed the estimate by a specified amount. Other States impose licensing or certification requirements on auto repair facilities and on auto repair mechanics.

While recent cases have drawn much attention to national auto repair chains, these chains constitute a limited portion of the industry. For example, in 1990, mass merchandisers accounted for only 4 percent of the automotive after-market service outlet market share. The three greatest market share segments, together accounting for 62 percent of the market, were service stations, with 25 percent, new car dealers, with 22 percent, and general repair shops, with 15 percent.

Most auto repair problems continue to be local in character. Nevertheless, this is an important consumer issue, and the Commission is committed to assisting State and local law enforcement efforts whenever it is feasible, and to identifying cases that can more appropriately be addressed by the Commission, rather than by State and local agencies.

The staff of the Commission has conferred with the subcommittee staff about three areas that may be appropriate for further Commission exploration.

First, the widespread use of flat rate manuals, which list the average length of time needed to make specific repairs. Repair shops may charge consumers labor costs based on those averages, even though the actual repair times may be substantially less.

A second area of interest involved incentive compensation systems in the auto repair industry. These systems, which include the use of quotas, commissions, or similar compensation may provide incentives for sales personnel to sell unnecessary auto repair services in order to meet quotas or receive larger commissions.

The final concern is low-balling, a practice where repair shops advertise deceptively low prices to lure consumers into the repair shop, even though only a few vehicles will be eligible for the advertised price. The staff of the Commission is in the process of examining these factual, legal, and economic issues.

Another possible law enforcement approach that we have identified is to focus on national franchised auto repair outlets, such as tune-up, transmission, and brake repair shops. These types of specialty repair shops held about 13 percent of the automotive after-market service outlet market share in 1990.

As you know, the Commission enforces a trade regulation rule concerning franchising and business opportunities. We are concerned that some auto repair franchisors may misrepresent the availability of training and assistance that will be provided to franchisees, or the degree of technical expertise required to operate a franchise. This, in turn, may cause injury to consumers, for example, by the delivery of inadequate or incompetent auto repair service by franchisees, who are improperly trained, because training is not provided as promised.

By focusing the Commission's enforcement efforts on the large franchise chains, we may help address repair problems that are of nationwide scale.

For example, the Commission just last month obtained a temporary restraining order and an asset freeze from the District Court in New Jersey against Car Checkers of America, which sells franchises for a mobile car inspection service.

The Commission shares the subcommittee's views on the importance of Federal-State cooperation in addressing consumer protection issues. Our staff has been participating in several of the activities undertaken by the Auto Repair Task Force created by the National Association of Attorneys General.

Similar joint efforts in the 900 numbers, telemarketing fraud, and environmental advertising and marketing have been extremely successful in the past, and we hope to continue that success.

One way we can work together to combat auto repair fraud is through education. One of the principal activities of the NAAG task force, in which the FTC staff participates, is the development of an auto repair fraud consumer education campaign in cooperation with the American Automobile Association. This campaign will use a variety of media to disseminate information to consumers and will tailor the information to the market in each State.

The NAAG Auto Repair Task Force also plans to conduct a forum for discussing the issues raised in the auto repair industry, and our staff is working with them on that forum.

We also plan to participate with the task force in summarizing the State laws in the auto repair area in order to obtain a more accurate picture of the extent and types of regulations currently in force. Such a summary also will assist in providing helpful information to consumers with auto repair problems.

In conclusion, the Federal Trade Commission shares the concerns of this subcommittee about the fraudulent practices occurring in the auto repair industry and the economic injury suffered by consumers as a result of those practices. The FTC is actively pursuing a range of activities to consider the specific problems in that industry, and possible solutions to those problems, as well as to clarify the Federal role in this area.

Thank you for the opportunity to appear today and report on Commission activities in combating auto repair fraud. And I, of course, am pleased to respond to any questions.

[The prepared statement of Ms. Azcuenaga follows:]

#### PREPARED STATEMENT OF COMMISSIONER MARY L. AZCUENAGA

I am Mary L. Azcuenaga, Commissioner of the Federal Trade Commission. I appreciate the opportunity to appear before the Subcommittee today to discuss the world of the Federal Trade Commission in combating fraud in the automobile repair industry. This written statement represents the views of the Federal Trade Commission. My oral presentation and responses to questions are my own, and do not necessarily reflect the views of the Commission or any individual Commissioner.

In a July 22, 1992, letter, your Subcommittee directed the Commission to investigate the practices of the automotive repair industry, and to report its findings to the Subcommittee. You expressed a particular interest in the Commission's recommendations regarding how the FTC and the federal government as a whole might assist the State Attorneys General in combating automobile repair fraud. The Commission's staff is engaged in a number of activities to address auto repair fraud. These include law enforcement efforts, as well as coordination and liaison with the states. I am pleased to provide you with a preliminary report on the Commission's activities.

#### LAW ENFORCEMENT EFFORTS

Traditionally, the automotive repair industry has been licensed and regulated at the state and local level. Some states, for example, require auto repair facilities to give consumers a written statement estimating the cost of repairs and also require the repair facilities to obtain further authorization from the consumer before proceeding with work not listed on the estimate, or if the cost of the repair will exceed the estimate by a specified amount.<sup>1</sup> Other states impose licensing or certification requirements on auto repair facilities and on auto repair mechanics.<sup>2</sup> While recent cases<sup>3</sup> have drawn much attention to national auto repair chains, these chains con-

<sup>1</sup> According to the most current figures we have available, in 1980, 23 states and the District of Columbia had such disclosure laws: Alaska, California, Colorado, Connecticut, Florida, Hawaii, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Hampshire, New Jersey, New York, Ohio, Oregon, Pennsylvania, Virginia, Washington, and Wisconsin. As noted later in this testimony, one of the projects of the NAAG Auto Repair Task Force is to survey and summarize the current level of state regulation.

<sup>2</sup> According to the most recent figures available to us, in 1980, six states and the District of Columbia used facility registration as a method to regulate auto repair practices: California, Connecticut, Hawaii, Michigan, New York, and Rhode Island; two states (Michigan and Hawaii) and the District of Columbia required mechanic certification or licensing through testing.

<sup>3</sup> Three recent state actions charged Sears, Roebuck and Company with selling unnecessary auto repairs. In September, 1992, Sears agreed to pay \$8 million to settle a civil action brought by the California Attorney General that charged Sears with improper practices at its 72 California auto repair centers. The \$8 million settlement included \$3 million in restitution to consumers, \$1.5 million to community colleges with auto repair facilities for the purchase of auto repair equipment and supplies, and the remaining \$3.5 million to be used by state and local law enforcement offices to cover investigative and monitoring costs. The consent decree also prohibits



stitute a limited portion of the industry. For example, in 1990, mass merchandisers accounted for only four percent (4 percent) of the automotive aftermarket service outlet market share. Discount and department stores accounted for another four percent (4 percent) of the market share. The three greatest market share segments, together accounting for 62 percent of the market, were service stations with 25 percent, new car dealers with 22 percent, and general repair shops with 15 percent.<sup>4</sup>

Most auto repair problems continue to be local in character.<sup>5</sup> Nevertheless, the Commission is committed to assisting state and local law enforcement efforts, whenever it is feasible, and to identifying cases that can more appropriately be addressed by Commission action, rather than by state or local agencies. We have little doubt that auto repair fraud and related deceptive practices are extremely serious and result in substantial consumer injury.

The staff of the Commission has conferred with the Subcommittee's staff about three areas that may be appropriate for further Commission exploration. First, the Subcommittee staff has expressed concern about the widespread use of flat-rate manuals, which list the average length of time needed to make specific repairs. According to the Subcommittee staff, repair shops often charge consumers labor costs based on those averages, even though the actual repair times may be substantially less.<sup>6</sup> A second area of interest to the Subcommittee staff involves incentive compensation systems in the auto repair industry. The Subcommittee staff has suggested that these systems, which include the use of quotas, commissions or similar compensation, may provide incentives for sales personnel to sell unnecessary auto repair services in order to meet quotas or receive larger commissions. The final concern raised by the Subcommittee's staff is "lowballing," a practice where repair shops advertise deceptively low prices (for example \$9.95 oil and lube specials) to lure consumers into the repair shop, even though only a few vehicles will be eligible for the advertised price. Such practices may be akin to the types of "bait and switch" schemes the Commission has seen in other areas.

These types of auto repair practices and potential remedies for these practices raise a number of factual and legal issues, including some that may require detailed economic analysis. The staff of the Commission is in the process of examining these factual, legal and economic issues.

Another possible law enforcement approach that we have identified is to focus on national franchised auto repair outlets such as tune-up, transmission, and brake repair shops. These types of specialty repair shops held about 13 percent of the automotive aftermarket service outlet market share in 1990.<sup>7</sup> Although holding only a relatively small share of the total market, the franchised auto-aftermarket industry

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Sears from replacing or upgrading an automotive part or service that is not necessary according to the manufacturer's specifications or accepted trade practices, unless the recommendation is reasonable and unless the consumer is informed that the service or part is not necessary according to specifications and the consumer agrees to the repair.

In addition, in July, 1992, Sears also agreed to settle charges brought by New Jersey as a result of that State's auto repair investigation. Among other provisions of this settlement, Sears agreed to contribute \$200,000 to establish an "Automotive Repair Industry Reform Fund," to be administered by NAAG. This money was used to create the NAAG Auto Repair Task Force in which the FTC is participating, and to fund the Task Force's information-gathering, legislative, investigative, and education projects.

Finally, in January, 1993, the Wisconsin Attorney General's Office resolved a case against Sears concerning allegations that Sears had oversold certain parts and services, made unnecessary repairs to cars, and billed customers for repairs which were not made. Among other provisions of the settlement, Sears agreed to hire an independent contractor to conduct 10 undercover inspections at Sears Auto Centers in Wisconsin over the next 18 months and to provide a report of each undercover investigation to the state.

<sup>4</sup>Tire stores held a 8 percent market share, specialty repair shops 13 percent, auto parts stores 7 percent, and home and auto stores 1 percent. Miscellaneous other outlets held the remaining 1 percent market share. MVMA Motor Vehicle Facts & Figures '92, (Motor Vehicle Manufacturers Association: Detroit, MI) 1992 at p. 66.

<sup>5</sup>The Commission receives few consumer complaints about auto repair fraud. Of the 41,215 consumer complaints in the Commission's consumer complaint system for 1992, only 76 complaints (.18 percent) involved auto repair fraud.

<sup>6</sup>In *Link v. Mercedes-Benz of North America, Inc. et al.*, 788 F.2d 918 (3rd Cir. 1986), the Appeals Court upheld a lower court finding that the use of flat-rate manuals did not constitute an illegal conspiracy to raise and fix prices because not only did the dealers set their own hourly rates for labor charges, but they also decided voluntarily whether to use a flat rate manual and, if so, whether to use the manufacturer's manual or that of an independent, third-party publisher.

<sup>7</sup>MMMA Motor Vehicle Facts & Figures '92, p. 66.

still had substantial sales: \$13.8 billion in sales in 1990, with \$15.4 billion in sales projected for 1991.<sup>8</sup>

As you know, the Commission enforces a trade regulation rule concerning franchising and business opportunities (the "Franchise Rule"), 16 C.F.R. § 436, which requires franchisors to disclose certain information to prospective franchisees. In the context of auto repair, we are concerned that some franchisors may misrepresent the availability of training and assistance that will be provided to franchisees, or the degree of technical expertise required to operate a franchise. These franchisor misrepresentations, in turn, may cause injury to consumers, for example, by the delivery of inadequate or incompetent auto repair service by franchisees, who are improperly trained because training is not provided as promised. By focusing the Commission's enforcement efforts on the large franchise chains, we may help address repair problems that may be of nationwide scale.

For example, the Commission recently obtained a temporary restraining order and an asset freeze from the District Court in New Jersey against Car Checkers of America, which sells franchises for a mobile car inspection service. *FTC v. Car Checkers of America, Inc.*, Civ. No. 93-623 (MLP), (D.N.J., filed February 8, 1993). The Commission's complaint alleged, among other things, that the company falsely represented that investors without prior technical experience could perform a sufficient number of car inspection services to turn a profit. The complaint also alleged that Car Checkers represented that it provided all of the tools necessary to conduct car inspections, but allegedly failed to disclose that their system was incompatible with some car models.

#### COORDINATION AND LIAISON WITH STATE AND LOCAL AGENCIES

The Commission shares the Subcommittee's views on the importance of federal-state coordination in addressing consumer protection issues. The FTC staff has been participating in several of the activities undertaken by the Auto Repair Task Force created by the National Association of Attorneys General ("NAAG"). Similar joint efforts in the areas of 900 numbers, telemarketing fraud, and environmental advertising and marketing have been extremely successful in the past, and the Commission hopes that our coordination with the states in the Auto Repair Task Force will continue that success.

One way we can work together to combat auto repair fraud is through education—helping consumers learn how to anticipate fraudulent repair schemes. One of the principal activities of the NAAG task force in which the FTC staff participates is the development of an auto repair fraud consumer education campaign in cooperation with the American Automobile Association ("AAA"). This campaign will use a variety of media to disseminate information to consumers and will tailor the information to the market in each state. Each organization will use its extensive distribution network to promote this education campaign. We will continue working with NAAG and AAA to develop and complete this consumer education project.

We are exploring other opportunities for consumer and business education regarding auto repair services.<sup>9</sup> The NAAG Auto Repair Fraud Task Force plans to conduct a forum for discussing the issues raised in the auto repair industry. The FTC staff is working with NAAG to plan this forum. Commission staff will attend the discussions, review any findings, and make recommendations to the Commission on what role, if any, the FTC might play in resolving the problems identified. We hope that this forum will identify additional problems and suggest additional avenues for Commission and state action.

As discussed above, many state and local governments have statutes and regulations that specifically govern the auto repair industry. The FTC staff plans to participate with the NAAG Auto Repair Task Force in summarizing the state laws in the auto repair area in order to obtain a more accurate picture of the extent and types of regulations currently in force. Such a summary also will assist the staff of the Commission in providing helpful information to consumers with auto repair problems.

In conclusion, the Federal Trade Commission shares the concerns of this Subcommittee about the fraudulent practices occurring in the auto repair industry, and the economic injury suffered by consumers as a result of those practices. The FTC is actively pursuing a range of activities to consider the specific problems in that

<sup>8</sup> "Bumper to Bumper Auto Care," *Nation's Business* (October 1991) p. 70.

<sup>9</sup> An active consumer and business education program in this area is paramount. In December 1978, this Subcommittee directed the General Accounting Office ("GAO") to examine the federal role in dealing with consumers' auto repair problems, including the relationship between federal agencies and state and local governments. The 1980 GAO report recognized the important role that consumer education can play in combating auto repair fraud.

industry and possible solutions to those problems, as well as to clarify the federal role in this field.

Thank you for the opportunity to appear today and report on Commission activities in combating auto repair fraud. I am pleased to respond to any questions the Subcommittee may ask.

Senator BRYAN. Thank you very much for your testimony. At the conclusion of the panel I will have a few questions. Let us turn next to Attorney General Del Tufo.

Let me say, for the record, that we have appreciated very much the cooperation that your office has provided to this subcommittee. One of your able staff lieutenants was with us last July to share testimony from your office's perspective, and we are particularly pleased to have you here today to give us not only any insight that you might care to with respect to New Jersey, but in your role as chairman of the national task force.

#### STATEMENT OF ROBERT J. DEL TUFO, ATTORNEY GENERAL, STATE OF NEW JERSEY

Mr. DEL TUFO. Thank you very much, Senator. And thank you for your kind remarks. And it is a pleasure and a privilege to be here today, especially to appear along with representatives of the FTC, with whom the attorneys general, over the past several years, have had many meaningful and fruitful cooperative efforts. And also my distinguished neighbor, Bob Abrams; it is a pleasure to be here with him.

I also, at the outset, would simply like to commend you, Senator, and your committee, for keeping this issue in the public eye. I think that your interest in this subject matter and the hearings that you have conducted and are conducting are very important ones.

I am pleased to speak as the attorney general of a State that has been in the forefront of trying to do something about automobile repair fraud, and also as the chair of the National Association of Attorneys General, Auto Repair Task Force. After seeing the video, I guess I appear also as a consumer who has been through many auto repair nightmares and tune-up terrors. I do not know that I am going to be able to fix my own brakes, but it is an idea. [Laughter.]

The NAAG task force was created as the result of an agreement entered into by the New Jersey Attorney General's office and Sears Roebuck and Co., under which Sears contributed \$200,000 toward the formation of the initiative. I would say to you also, Senator, in response to your opening remarks, that Sears has been cooperative in working on these things. And I am pleased to announce here today also that Tom Udall, the Attorney General of New Mexico, has agreed to serve as the cochair of this group. He is a fine young man, and we certainly welcome him aboard.

As the TV video which you played indicates, as there stated, the single most constant consumer complaint involves auto repair fraud. Fully one-fourth of the complaints that are received by the consumer affairs division in my office cover the same type of subject matter. And following investigations into auto repair practices by New Jersey and California last spring, and following your hearings in July, the complaints even increased dramatically.

We knew that consumer problems were bad, Senator Bryan, but I guess we did not really know how bad. And they are significant.

If I may, you summed it up well at the hearing in July when you said, and I am quoting, "there was a disturbing pattern in the auto repair industry that consumers are defrauded regularly through a host of schemes, including bait-and-switch tactics, the exploitation of concerns about safety, and the sale of unneeded parts."

I would say, based upon what you have done here with your committee, and based upon what some of the States have accomplished, we have come a long way in the past seven months. Consumers truly used to be in the dark, but awareness has substantially increased. And if the industry used to feel free to operate as it saw fit, it is now clearly on notice that business as usual is not acceptable and is a very dangerous practice.

When the results of the investigations in New Jersey and California were announced, Sears came forward with a good corporate citizen offer to change its corporate practices and to spearhead industrywide reform. I say very emphatically that the rest of the industry should follow suit, engage in self-examination and correction and reform. The task force is prepared to help make those types of changes.

As of today, we have some 23 States in the task force, together with the Federal Trade Commission, pledged to participate in a three-part program. This is a really unique opportunity to change the way an industry does business, and we do have momentum now, because of what has occurred over the past year or so. And I think we should really try to press the advantage and move ahead as responsibly and dramatically as possible.

The initiative that we propose has really three prongs to it. The first is an effort to identify industrywide practices that may be unfair or deceptive and that require correction. Obviously, in order to come to corrective measures, we must obtain a full and complete profile of the industry to understand how it functions in all areas.

We are going to do this by putting task force members in place to evaluate things within their States, and also to try to get some assistance from the industry. Because we believe it important to try to include the industry in this process we have mailed letters to a variety of trade members and associations and manufacturers and franchise dealers seeking data and pertinent materials. And we have requested industry input on existing problems and the identification of solutions.

We also believe it would be useful to sponsor some public forums in the not-too-distant future so that the information that we receive may be scrutinized further and subjected to the crucible of public debate, and we might also, obviously, obtain some additional information from citizens at these public hearings.

Now, I guess the question is, or one question is, Will the industry, in fact, be cooperative? Will it, as a whole, respond as responsibly as Sears did a few months ago?

I hope so. I have every reason to believe that perhaps it will. We have already received an invitation to meet on industrywide issues from an industry group forged by Sears, which is called Maintenance Awareness Program, MAP, a group that apparently has recognized the benefits of working partnerships, and is offering to de-

velop industrywide self-policing procedures. And, obviously, self-policing is the most economical and the most correct and one of the best ways of trying to deal with the problem.

We want to encourage the effort, and we want to help this organization focus its direction so that consumer needs will be best met and best served.

As you heard last July and, indeed, as we heard on this video, Senator, that you played here this morning, customers not only feel vulnerable when they need auto repair services, they are vulnerable. And also, as the video indicated, an important area and the second prong of our attack against auto repair fraud involves consumer education.

Obviously, fraud is going to persist as a really significant problem, just so long as consumers are helpless to help themselves to determine whether, in fact, fraudulent or unfair practices are occurring. What we need, basically, are savvy consumers. Accordingly, in cooperation with the Federal Trade Commission and the American Automobile Association, we will be formulating and issuing educational brochures, videos, news releases, and public service announcements.

My prepared remarks indicate that by summer we will be ready to move ahead with this program. That might be a bit optimistic, and we will shoot for it, but certainly by the fall or the early fall, we will be in a position to move ahead.

Finally, enforcement efforts must be continued and will be enhanced. Litigation and undercover auto repair investigations are really essential and are effective as deterrents and as vehicles for both compensatory recovery and punitive redress. They are also expensive. Accordingly, the task force has set aside \$125,000 of the \$200,000 for a revolving fund to provide seed money to States wishing and willing to aggressively police the auto repair industry.

We are going to make grants to States who apply for such assistance for use in auto repair investigations and litigation. It is the intention that the loans will be repaid as these investigations and as the litigation bear financial fruit.

We are hopeful, too, that the fund might even grow, and that, as States succeed in recovering money from these enforcement efforts, they will not only reimburse the fund, but also make additional contributions to enhance it. I hope that they follow New Jersey's lead, which, in a statesman-like posture, authorized \$200,000 of its settlement to fund the creation and initial operations of the task force.

So, in a nutshell, we would like to find out fully how the industry works, what makes it tick. We would like to recommend necessary changes. We would like to encourage self-policing by the industry itself. We want to make our consumers savvy, so we are going to pursue education vigorously.

And as the perhaps ultimate deterrent, as the mechanism for redress in the event these other measures do not succeed 100 percent, we want to pursue vigorous undercover enforcement, and we intend to assist States who wish to help themselves in this area.

So, Mr. Chairman, thank you again for giving me the opportunity to be here, and thank you again for all of your efforts in this area, which benefit, so much, the consumers of this country.

[The prepared statement of Mr. Del Tufo follows:]

PREPARED STATEMENT OF ROBERT DEL TUFO

I am pleased to speak to you today as the Attorney General of a State in the forefront of combating automobile repair fraud.

I also appear before you as the Chair of the National Association of Attorneys Generals Auto Repair Task Force.

The task force was created as a result of the agreement entered into by the New Jersey Attorney General's office and Sears Roebuck & Company. Sears contributed \$200,000 toward the formation of the task force. Today, I am pleased to announce that Attorney General Tom Udall of New Mexico has agreed to serve as vice chair of that task force.

Fully one-fourth of complaints received by the Consumer Affairs Division of the Department of Law and Public Safety, which the New Jersey Attorney General heads, involve and relate to auto repair. Following auto repair investigations by New Jersey and California last spring and summer, and after this subcommittee's hearings last July, my office and other attorneys general offices were inundated with complaints about industry abuses. We knew that consumer problems with auto repair were bad. We did not know how bad. Senator Bryan, you summed it up well when you observed at the last hearing that, and I quote, "There was a disturbing pattern in the auto repair industry; that consumers are defrauded regularly through a host of schemes, including bait and switch tactics, the exploitation of concerns about safety and the sale of unneeded parts".

We have come a long way in the last seven months. Consumers used to be in the dark. Now awareness has increased. If the industry used to feel free to operate as it saw fit, it is now on notice that business as usual is a dangerous practice.

When the results of the investigations in New Jersey and California were announced, Sears came forward with a "good corporate citizen" offer to change its corporate practices and to spearhead industry-wide reform. The rest of the industry should follow suit and engage in self-examination, correction, and reform. The task force is prepared to help.

As of today, twenty-three states have joined the task force and, together with the Federal Trade Commission, have pledged to participate in a new three part program to attack fraudulent practices in the auto repair industry. This presents a unique opportunity to make fundamental changes in the way an entire industry does business. Allow me to describe briefly and more specifically the three prongs of this initiative.

First, the task force will seek to identify industry-wide auto repair practices that may be unfair or deceptive. We must obtain a better profile of the industry and understand how it functions in all areas. We shall do so. For the inquiry will be broad based and will include even standard industry practices that may be operating to the detriment of consumers such as the use of flat rate manuals. Commission based sales, overly aggressive sales pitches and other promotions. Our recent New Jersey investigation revealed an obviously infirm system of incentive compensation for employees, a system which was uniformly in place and contributed to overselling. We expect other issues to reveal themselves as we go along. Ultimately, the task force will issue a report of its findings and offer recommendations as to how best to address consumer auto repair problems.

We wish to include industry as part of this process. Letters have been mailed seeking data and pertinent materials to trade members and associations, shop manual publishers, manufacturers and franchise dealers. We have also requested industry input on the nature of existing problems and the identification of possible solutions. Once this information is gathered and analyzed, we shall be asking the task force to consider sponsoring public forums where the information may be scrutinized even further and where additional citizen input may be obtained.

Will the industry be cooperative? Will the industry respond as responsibly as Sears did? I hope so. And I have every reason to believe it will. Already I have received an invitation to meet on these issues from an industry group forged by Sears, which has, in a positive vein, sought to make the agreement it reached with the state of New Jersey a model for the entire industry. The industry group, called M.A.P. for "maintenance awareness program", apparently recognizes the benefits of a working partnership and is offering to develop industry wide self-policing procedures. We wish to encourage this effort, and to help focus its direction so that consumer needs will be best met and served.

As you heard last July, consumers not only feel vulnerable when they need auto repair services, they are vulnerable. Thus, the second prong of our attack against auto repair fraud entails consumer education. Regardless of other remedies, fraud

will persist as a significant problem so long as customers are helpless to determine whether it is in fact occurring. We need savvy consumers. Therefore, in cooperation with the Federal Trade Commission and the Automobile Association of America, the task force will issue educational brochures, video news releases and public service announcements. By summer, we hope that a comprehensive consumer education program will be ready to go to help consumers with car trouble.

Finally, enforcement efforts must and will be enhanced. Litigation and undercover auto repair investigations are essential and effective as deterrents and as vehicles for both compensatory recovery and punitive redress. But they are also expensive. Therefore, the task force has set aside \$125,000 of the \$200,000 for a revolving fund to provide seed money to states wishing and willing to aggressively police the auto repair industry. Grants will be made to states for use in auto repair investigations and litigation. The loans will be repaid as the investigations and litigation bear financial fruit. The fund may even grow if states, as they succeed in recovering money from these enforcement efforts in terms of both compensatory damages and penalties, not only reimburse the NAAG fund but also make additional contributions to enhance it. New Jersey adopted such a statesmanlike posture when it authorized \$200,000 of its settlement to fund the creation and initial operations of the task force. I hope and expect other states to be as altruistic.

In conclusion and summary, the task force believes that the underside of the auto repair industry must be exposed to light. We must know precisely how this industry works, and we must motivate industry members to function in a manner which will benefit the consumers they serve. Industry self-policing is constructive, economical and of obvious import here.

The task force will thus be urging industry members to make consumer oriented changes and to institute self-policing procedures. We shall watch and work with them to see how far reform will reach. We shall also be educating consumers so that they have the capacity to watch out for themselves and to assist our enforcement efforts. And, through monetary grant assistance, we shall enable individual states to conduct investigations and to bring enforcement actions so as to deal forcefully with those who do not follow good practices. We simply cannot let up; we cannot lose the window of opportunity that is now open. We must capitalize on the momentum we now have with both consumers and the industry.

On behalf of my state and the entire NAAG task force, I wish to thank you for the opportunity of appearing here today. More importantly, I wish to thank the subcommittee for continuing to keep this issue in the public eye. This is the only way to ensure it receives the priority attention it assuredly deserves.

Senator BRYAN. Thank you very much, General Del Tufo. We appreciate the leadership that you have shown, not only in New Jersey, but nationally. And we will look forward to having a little colloquy with you to get the benefit of your thoughts with respect to some of the other observations that the preceding witness and, I am sure, that General Abrams is about to share with us.

General, it is a pleasure to have you here this morning, as well. I know that you have a specific legislative proposal that you have advanced before the New York State legislature. And I hope during the course of your testimony you might share with us what that consists of.

#### **STATEMENT OF ROBERT ABRAMS, ATTORNEY GENERAL, STATE OF NEW YORK**

Mr. ABRAMS. Thank you, Senator Bryan, for those comments and for the opportunity that you have provided me to come before you today, for your extraordinary leadership in helping to focus this country on a continuing problem, and for allowing me to be with some distinguished colleagues who I have had the privilege of working with in the past.

Commissioner Azcuenaga and I have shared a podium like this on several occasions and, of course, I am always honored to be in the presence of one of the most effective and dedicated and out-

standing attorney general in the country, Attorney General Bob Del Tufo.

Mr. Chairman, in our experience, auto repair problems continue to be a major source of consumer complaints. Common problems include faulty repairs, unnecessary repairs, unanticipated repair costs that are very commonly called the "5 o'clock surprise," overcharging, and outright fraud.

Certainly these problems are not new. More than a decade ago, NHTSA, the National Highway Traffic Safety Administration, estimated that consumers lost over \$20 billion annually on unnecessary auto repairs. That meant that for every \$1 spent on car repairs, 40 cents was wasted. The Center for Auto Safety concluded in its 1990 Lemon Book that NHTSA's findings of waste in auto repair were still true today.

Those were the words they used back in 1990 and I have no reason to believe that there is any less fraud and abuse in 1993, as clearly the showing of the footage reflects in part that this is a problem in Las Vegas, throughout Nevada, New York, New Jersey, and the entire country.

Auto repair fraud has long been a priority of my office. So, for example, back in 1980 we issued a major study of the flat-rate manual system used by most repair shops in New York. We found that 56 percent of the time consumers were charged for more hours of labor than the mechanic actually spent doing the repair itself.

At that time we proposed remedial legislation that would have required auto repair shops to maintain actual labor time records for work performed, to disclose the actual time spent and to tell consumers how the labor charge was computed, whether by actual time or by flat rate. We also advocated State certification of mechanics. Unfortunately, however, thus far neither proposal has been adopted in New York.

New York State laws and regulations require repair shops to give consumers written estimates on request, perform only authorized work, provide a detailed invoice of all parts and labor, and to offer to return used parts. While our State provides important protection to consumers, I am committed to further strengthening existing law.

And so you have requested that I focus particularly today on two legislative initiatives in the auto repair area which my office proposed to the 1993 legislative session, this present session; namely restrictions on incentive compensation plans and then, second, mandatory repair warranties.

The first proposal is based on investigations by my office and other States of auto repair practices by Sears, Roebuck and Co., which we believe is not unique to that company alone, but is indeed widespread in the industry. These investigations revealed that service advisers were offered a commission compensation plan based on a percentage of their sales.

Thus, the service advisers' total income was directly tied to their volume of sales. In addition, specific sales goals were set for certain products, such as shock absorbers or springs, and there were contests conducted to reward the greatest sales increases. My office concluded that the service advisers frequently recommended and



sold auto repair services, as well as products, that were totally unnecessary.

In June 1992, as a direct result of the various investigations into its practices, Sears voluntarily ceased all commission compensation and goal-setting programs. In October 1992, in a settlement with our office, it agreed to pay New York \$300,000 in costs for the attorney general's investigation.

It should be noted that Sears fully cooperated with our investigation. Our agreement also incorporated the restitution provisions of the California and national class action judgments. And so as a result, Sears is offering coupons worth \$50 to more than 75,000 New York consumers.

The need for our legislation is further corroborated by the findings of a report that was recently issued by the New York State Consumer Protection Board. That board studied the compensation plans of auto repair chains in New York. It found that 12 out of 14 companies provide some form of commission compensation to their employees. The firms were identified as AAMCO, Bridgestone, Cole, Cottman, Goodyear, Jiffy Lube, Lee Myles, Meineke, Midas, Monroe, Montgomery Ward, and QuickLube.

At least 10 of those firms base such commissions on factors which include the sales of parts or services. To deal directly with this issue of incentive compensation, we have proposed a bill which would prohibit repair shops from using commission plans to compensate the sales personnel.

The proposed legislation also addresses another problem that we encountered with Sears, allowing salespeople with little or no expertise in auto mechanics to actually diagnose the vehicles and then recommend needed repairs. Under the bill submitted by my office, a repair shop could only use competent mechanics to inspect and diagnose a vehicle. And that is one of the agreements and commitments we had from Sears and so we seek to now incorporate that in the laws of the State of New York.

The bill would also provide for both a private right of action and enforcement by the attorney general. An injured consumer could recover actual damages or \$250, whichever is greater, and the court could triple the award of actual damages up to \$1,000 for any willful violations.

Our second legislative proposal would require repair shops to offer a statutory written repair warranty with a duration of 90 days or 4,000 miles, whichever comes first. The shop would be required to correct any defective repair at no cost to the consumer, and it has to be done quickly, at least within 10 days of receiving the car. If it is impracticable for the consumer to return the vehicle to the shop, the consumer—let us say the consumer, after a repair, is visiting a relative halfway across the country—the consumer would be reimbursed for the reasonable cost of any repair made.

The repair warranty could exclude problems that are caused by collision or abuse, negligence, theft, vandalism, fire, or any other casualty loss. The bill would provide both for a private right of action and for enforcement by the attorney general.

According to our department of motor vehicles, as of December 1, 1992, New York had more than 25,000 registered auto repair shops serving more than 10 million motor vehicles. While DMV

regulations obligate repair shops to provide "quality repairs," current law requires the DMV to find "willfulness" or "gross negligence" in order to take administrative action. But faulty repairs due to either simple negligence or incompetence or mistake can be equally harmful for consumers and, in fact, are far more likely to occur.

A statutory warranty of repairs would therefore provide essential new protection to consumers. Further, the need for a statutory warranty is especially strong in light of court decisions that have held that the implied warranty of merchantability found in the uniform commercial code does not apply to services such as auto repairs. It applies to products and things that are sold in the marketplace, but not to services per se.

Many repair shops already give repair warranties on a voluntary basis. So, for example, Shell Oil Auto Care Centers, and Goodyear Auto Repair Centers, all operating in New York, offer customers repair warranties of 90 days or 4,000 miles, the same duration as provided in our bill.

Similarly, in certain upstate areas of New York, the American Automobile Association, through some of its affiliated service stations and repair shops, offer consumers what it calls approved auto repair, and that also provides consumers with a repair guarantee of the same duration in the bill. So, we are not asking anything that is outlandish or unreasonable, because existing leaders in the industry, some of them provide that kind of protection today.

The bill also is patterned on the successful statutory used-car lemon law warranty first proposed by my office and enacted into law in 1984. We are very proud of that. We became the first State in the country to adopt a used-car lemon law and these kinds of protections for repairs made are found in that statute.

And so, Mr. Chairman, I end where I began, thanking you for the chance to be here this morning and thanking you for your extraordinary leadership in focusing the public's attention on a bread and butter issue which is of enormous consequence to them in a period when dollars are hard pressed for the average family.

Senator BRYAN. Thank you very much, General Abrams. And we thank you for your leadership and wish you well with these legislative initiatives that your office is supporting in New York.

Let us begin our questioning with Ms. Azcuenaga. Tell me, if you will, the current jurisdictional scope? If the Commission chose to become more involved in this issue, do you have the ability under current law to promulgate rules, for example such as Attorney General Del Tufo and Attorney General Abrams have talked about with respect to warranties, with respect to service compensation incentive programs, flat-rate manual practices, accelerated maintenance schedules?

What is the scope of the authority that the law confers upon you at the present time if you, at the discretion of the Commission, chose to exercise it?

Ms. AZCUENAGA. Mr. Chairman, we do have authority under the Magnuson-Moss Act to issue rules that have the force and effect of law. There are certain requirements that we have to meet before we can issue those rules. For example, we have to find that there is a widespread problem in the industry of conduct that does vio-

late the FTC Act, and then find whether we have a remedy that would improve that situation, rather than just impose regulatory requirements without accomplishing much.

When we do issue rules in areas such as this that affect States and localities, one of the issues that often comes up is preemption. There are many States that have laws in this area. Some of them think that their laws are optimally drafted and might not like to have a Federal Trade Commission rule. That would not stop us from issuing one in an appropriate situation, but that is an issue we always have to deal with.

Senator BRYAN. Well, I am just simply trying to inquire without suggesting at this point what you ought to do. But at least you would have the authority to do so.

My understanding is that you have, as an agency, promulgated used-car rules which require the disclosure of certain things before a customer buys that automobile and that as an enforcement mechanism you use what is referred to as a sweep. Can you tell me, first, whether I am correctly informed? And, second, how the sweep works and, in your judgment, is it an effective mechanism to help control the marketplace?

Ms. AZCUENAGA. Yes, you are absolutely correct, Mr. Chairman. We have used sweeps, I think very effectively, in the enforcement of our used-car rule, and we have worked with the States and they have worked with us and have been very helpful.

The way that works is we combine our efforts with those of the States and in the used-car area, for which we have a disclosure rule, we send investigators out. They visit the used-car lots and essentially do a count of how many cars have the disclosures and how many do not. It is a fairly easy thing to accomplish and since we have undertaken the sweeps, we believe that compliance with our used-car rule has risen in a significant fashion.

Senator BRYAN. I know that the Commission chairman has developed a much closer working relationship with the States' attorneys general. That has been noted on prior occasions before this subcommittee and in different contexts.

But specifically, do you have any type of formalized mechanism as you look at problems that are as pervasive as this, that are clearly national in scope? And recognizing this morning that we have two leaders who have done an outstanding job in representing the consumer interests of their own State, as to how you might more effectively work together, recognizing that they are pursuing initiatives in their own States but recognizing that there may be a role for the Federal Trade Commission to assist them. What type of mechanism, if any, do you have?

Ms. AZCUENAGA. Well, Mr. Chairman, that is one of the reasons we are so very happy that NAAG has formed the task force on auto repair and has invited us to participate in that task force. We will be working with the task force to the extent we can on each of its activities. We hope to provide assistance as we go along, where we can, and we also hope that through the task force we will have greater communication on these issues so that the States can provide us information and help us find cases, in particular, cases that we can address on a national basis perhaps more effectively than they can address on a State basis.

One of the things that is already well along in the task force is the consumer education campaign that to which General Del Tufo referred. That is actually quite exciting; I am quite excited about it anyway, perhaps as a consumer as much as a commissioner.

And not only do we have Federal-State cooperation on this, but we have also engaged in Government-private cooperation with the American Automobile Association. For example, AAA is preparing the first draft of the pamphlet we hope to issue describing the major component systems of automobiles.

With respect to each system, the pamphlet will provide a list of questions that consumers can and probably should ask when they go into an auto repair shop, and in addition, will provide possible answers, the kinds of answers they might get. So that people like me, I am sorry to say, can go in and try to make some sense out of the situation in dealing with a repair shop. I think the brochure is going to be extremely useful for consumers and I am delighted that it is underway.

Senator BRYAN. Well, it is not just people like you, it is all of us. [Laughter.]

You go in and hold your breath and pray for a result that you can afford. With respect to the areas that you have indicated that you are looking at, the flat-rate manual, the incentive compensation systems, and the low-balling—those are the three areas that you pointed out in your testimony—how soon before you are able to share with us the product of your analysis? What kind of time line are we looking at?

Ms. AZCUENAGA. Well, Mr. Chairman, we are working with the State task force and it is gathering information. We would like to continue to coordinate with them and make the best use of that joint effort in preparing the report. We will have a little better idea of timing perhaps within 30 to 60 days. On the other hand, if this subcommittee, of course, wants something by a date certain, we will comply.

Senator BRYAN. Well, I certainly applaud the cooperative efforts. I mean that is a situation that did not exist prior to the new Commission and so I think we want to encourage that. I do not suggest that you want to charge off on your own without working with, you know, the attorneys general who have a tremendous background of experience in this.

In addition to the three areas that you have mentioned specifically, at our hearing in July, and I think maybe you will have a chance to at least see some of the record that was developed there, there were two other areas that were mentioned as potentials for abuse.

One was the accelerated maintenance programs which are in existence, at least in some repair shops. That is, you go into your repair shop and they have got a schedule of when you need to have your oil change, when you have to have certain maintenance items performed. The testimony indicated that these schedules oftentimes go far beyond what the new car warranty requirements are and, in effect, are a very subtle way of getting into the consumer's pocket unnecessarily.

Most people having—I suppose the automobile today is the second largest investment people make, their home being the largest.

But you used to be able to buy a home for the cost of a new automobile today, so if you see something—and you have got a \$15,000 or \$20,000 automobile and you see the maintenance schedule and it says come in every 2 weeks and get your oil changed. Now that is hyperbole, I do not suggest that the record indicated that, but your first inclination is you want to protect that investment and so you are going to come on in.

Have you had that experience at all in terms of any of your analysis so far? Or what are you hearing about that practice?

Ms. AZCUENAGA. Well, Mr. Chairman, we share your concern about subtle attempts to get money from consumers that consumers should not be required to pay. I do not know that we have studied that particular issue, but it is one that I think would be of interest for us to study and it is certainly something we could look into along with the other issues and address in our final report to the subcommittee.

Senator BRYAN. OK. Attorney General Del Tufo, let me follow up on your task force and see exactly where—what kind of time line are we looking at before the States can make application, as you have shared with us in your testimony, to receive money for sting operations or consumer educational programs? Are you set up now that you can receive those applications, or have you indeed dispersed any of the money?

Mr. DEL TUFO. The money has not been dispersed as yet, Senator, but I think we are just about at the point where we can receive applications and start becoming active. We hope to have at least five grants out this year, to five States, obviously, for the purpose of conducting these investigations.

I would also comment, if I may?

Senator BRYAN. Please.

Mr. DEL TUFO. In response to the last question, that one of the other objectives of this task force is to gather information about practices in the industry as a whole. So, we are not going to be confined to any one particular practice; we are going to try to cover the waterfront. And certainly the one that you mentioned will be among them.

And, really, if there are others that come to the attention of the committee, I know that our staffs work very closely together, we would like to have them so that we can pursue it. And we have enjoyed such a good relationship since Janet Steiger has been at the FTC and with the present Commission, so we look forward to really working hard in that area.

Senator BRYAN. Share with us and let me invite General Abrams to comment too, if it refers to him. What role do you see the FTC playing in working with the States in addressing this pervasive problem?

Mr. DEL TUFO. The FTC has much expertise and a national reach and I think, first of all, can be very helpful in this educational area, which seems to tie in with many activities that the FTC engages in already.

And as I say, there are so many things that are important here, but certainly, an educated consumer, a savvy consumer, is one of the most important things that we could have going for us. Because it will prevent fraud and in addition to that, if there are some un-

scrupulous operators out there, we need savvy customers to tell us about it. We cannot be every place all the time.

So, I see the FTC playing a major role there. I also would invite and appreciate assistance in any other area. I think frankly that the—probably on the undercover investigate side—that seems to me to be more of a State-oriented activity. But with the education and with the work of the task force to gather information about industry practices and to come up with recommendations, I certainly welcome FTC participation.

Because, in response to some of your earlier questions here today, Senator, we ought to try to get all the information in and we ought to evaluate it and then we ought to try to decide what is in the best interest of the American consumer. Do we need some nationwide regulations from the FTC? Do we need some nationwide legislative attention from the Congress? Do we want to proceed on a State-by-State basis?

I think that evaluation and those ultimate recommendations which we will bring back to you, of course, are very, very important. And I think we need to have not only the attorneys general parochial interest or the State interests, but a national perspective as well. I think the kind of debate that could go on in that task force over ultimate solutions would be a very healthy one and come up with the strongest possible package for protecting people from this side of invidious fraud.

Senator BRYAN. General Abrams, do you have a thought?

Mr. ABRAMS. Yes. I would personally like to see the FTC become aggressive in this area, take a look at adopting the kinds of rules that I outlined in my testimony that is the basis of the legislation that we are seeking to enact in New York State; to deal with the Commission issue, to deal with the salesperson who has no expertise or training at all; to deal with the area of warranty for those parts, for the 90-day or 4,000-mile period.

That could be done by the Federal Trade Commission and protect people all across the country. I am optimistic about our legislation, but there are powerful forces on the other side.

I indicated in my testimony that more than a decade ago, we put in some legislation to deal with the flat-rate manual. It never got passed and it is not entirely clear whether we can sail through both houses of the legislature with our bill.

If the FTC were to take some leadership, then that could not only protect New Yorkers, but people all across the country, and the FTC could do it without preempting the States. Obviously, that is a very sensitive and important issue for the States. We should not be preempted, but we should be given the privilege and the opportunity to enforce Federal regulation or law.

And so, in States like New York, where there is the power, legislatively, statutorily, to enforce FTC regulations and rules, we would then be able to do that. Where there are States that do not have that power, we should pursue what has been talked about for a number of years, legislation in the Congress that will enable States to have the standing to go into Federal court and enforce Federal regulations of the Federal Trade Commission.

So, speaking for myself personally, I would think that that would be a responsible thrust on the part of the FTC, based in part on

the record that you have so carefully documented in the course of these public hearings, that this is a substantial and widespread problem; that it involves an incredible number of people in this country and a big dollar amount.

Mr. DEL TUFO. Senator, may I just add one thing?

Senator BRYAN. Certainly.

Mr. DEL TUFO. I certainly agree with my colleague on this score. And I just want to emphasize again, that if the work of this task force confirms what we suspect, that these practices are not in a locale or in a particular State but do spread nationwide, then obviously there is some real need and efficiency in having some national attention directed to it.

Senator BRYAN. In General Del Tufo's testimony, he indicated that, as part of the task force operation, they want to invite and to include responsible members in the business community. And I certainly agree with that. I think that makes some sense.

My question, General Abrams, to you is that it seems like the legislative approach that you have taken in New York is a very reasonable—it is a pretty balanced approach. There may be some give and take as there generally is in the legislative process, both at the State level and certainly here at the national level.

What kind of response are you getting from the industry with respect, say specifically, to the two areas that you talked about, the compensation incentive programs for the service writers and the warranties? That strikes me as being a pretty reasonable and a modest step in some Sears to give them credit and acknowledge that they are going to discontinue the service compensation incentive program.

What kind of response do you get from the industry?

Mr. ABRAMS. Well, it is a mixed bag. Some in the industry that are already providing some of these benefits and services, whether it is the warranties or the elimination of the commission compensation program, but then you get the response, Why are you picking on us? And why are we different from anybody else that works on a commission basis?

And I think there is a difference. I think it has been demonstrated that there is rampant abuse and fraud in this particular industry. We are not finding it on the part of shoe salesmen or on the sellers of life insurance.

In those cases, the consumers are also placed in a different position. They are not as vulnerable. You can exercise your own discretion and make reasonable judgments, based upon going next door to another shoe store or making selected phone calls about finding out what the rates of another insurance company are.

As the footage showed, with respect to auto repairs we are not all in that same equal footing and equal position. We have had broad-based editorial support for our proposals. When we surfaced with them a little over a month ago, we were able to get very positive editorial strength from newspapers from around the State and of course, consumer groups and others.

So, we are hopeful that we will be able to get this measure passed in the legislature and that those components of the industry that are waging opposition will not be able to prevail.

Senator BRYAN. Well, as a former attorney general, I have a preference for the kind of approach that both of you are taking. But it seems to me that there is a noteworthy observation.

That so frequently in the past when there is failure at the State level to respond to a problem which is as pervasive as this, clearly as that footage in Las Vegas could have been taken in any community in America. And I think everyone in this room fully recognizes that.

Indeed, if there is no action taken, obviously it invites a larger Federal role. I think a cooperative State and Federal relationship is the most appropriate. And this Commission, I think through the chairman, has set that tone and both of you have acknowledged that.

You have also talked about the consumer education. There is no question that that is a part of it. And I guess maybe, General Del Tufo, if I may, let me ask you to be a bit more specific in terms of the type of consumer education program that you are talking about. Clearly, pamphlets and brochures are nice and I do not mean to denigrate that. But at least implicit in General Abrams comment and what the film, I think, shows is that most of us do not thoughtfully contemplate, now this morning is the day I am going to go down and get my automobile tuned up or just have them check the transmission.

Generally there is a provoking event. You cannot get the car into reverse. The car does not start. Some indication that you are about to have a crisis and you are just limping in to the repair facility, the vulnerability that General Abrams talked about.

In those circumstances, obviously the consumer does not have the benefit of looking at Consumer's Report or Consumer Union, which you might spend weeks looking at to see whether you are going to buy certain type of stereo equipment, for example.

Is there some other approach that might be more direct and more helpful in terms of reaching in a more comprehensive manner, the public, to educate them on the pitfalls of making a decision for a car repair?

Mr. DEL TUFO. I think the task force is amenable to considering anything that sounds reasonable and certainly amenable to picking the ones that are going to be the most effective.

I agree with you. I do not think that eschewing the distribution of brochures, for example, is something that we should consider. Everything falls into place and everything has some effect. But there are some things that are more effective than others.

And I think that the subcommittee will take that into account. Now, I would on that score say that the FTC has a lot of experience in consumer education and getting the word out. So, we are going to be guided considerably by that experience and what makes sense from a national perspective in getting things out there.

Second, in a number of areas in my experience as attorney general I have found the television stations to be very, very cooperative and interested in being good citizens and putting a message out for people.

And I think that we would ask the television stations and the cable stations and other media such as that to cooperate with us



on a volunteer basis to try to alert the public to things that are going on.

I mean, we can tell the public about some of the things that were on this video, second opinions, parts, a variety of things.

We had a problem in New Jersey—I guess we have had a problem nationwide—but particularly in New Jersey in the fall, around Christmas time, of carjacking. The offense poses a serious threat to the personal safety of people, not only to property.

We managed to assemble a Federal, State cooperative law enforcement effort and a program of public education involving public information brochures and videos. And the stations were wonderful in terms of running these tips on how people could protect themselves from being physically harmed by a would-be thug who would do a carjacking.

I think that the auto repair problem is so pervasive and so expensive and touches everybody in this society so closely, as General Abrams pointed out, that we will find these media outlets very willing to work with us. And again, I am sure the FTC will have some other ideas and we are ready to listen.

Senator BRYAN. You led into an area, General Del Tufo, that I was going to ask you about. Clearly, television is such an effective medium in reaching so many people that clearly some type of PSA that reaches people before they face that crisis with their automobile I would think would be very, very helpful. And we will be interested to see what the response is as the Task Force approaches that.

General Abrams, you have suggested a couple of legislative approaches here. Is the association, does NAAG work on, in effect, taking the best out of every legislative initiative of the 50 States? You know, part of the thing that we are—at least a revitalized federalism is to recognize the States as these great laboratories of experiment. Not all wisdom resides in the banks of the Potomac. Some States have done some extraordinarily effective things in a whole host of areas, whether we are talking about medical care reform or as we are talking about this morning, in terms of consumer initiatives to protect the public.

Do you get together or is there a mechanism for you to do so to address this problem and say, “Look, here is what has worked effectively in our State as far as a legislative approach.” And perhaps you and General Del Tufo and your colleagues at your annual meetings work on model legislation that, indeed, you would offer to your colleagues. Obviously, it would be their decision as to whether to support that type of legislative approach.

But there is a lot of experience out there and I suspect some things that are undertaken work reasonably well and others that are well intended, frankly, just do not have the kind of effect that is intended. Maybe you can respond to that.

Mr. ABRAMS. Yes, Senator Bryan. As you well know, being a former attorney general and a former member of the National Association of Attorneys General, there always has been excellent coordination and cooperation between the States. Partisanship plays no role in our deliberations. No matter what part of the country the attorney general comes from, whatever is the party affiliation, it is absolutely irrelevant as we collectively get together and share in-

formation about what we are doing and define goals about how we can better protect our own citizens.

And clearly, I think, in the intervening years since you and I served together, there has been even increased cooperation, advances on what has gone on before, to the extent that there has been cooperation in multi-State investigations, multi-State litigation. For the first time in the history of the country, all 50 jurisdictions have gotten together in a single action and brought antitrust enforcement cases and other enforcement and consumer protection cases.

And so on the legislative front as well, there is the opportunity for us to share and learn and forge ahead. My own perspective is the best education program that we could launch are the new rules that are adopted by the FTC, telling people about how everybody in American is protected for the 4,000 miles or the first 90 days of a repair. And how no longer will auto repair companies be able to hire salespeople and pay them on the basis of commissions.

Or legislation that would be adopted at the Federal level, although I think the rule level at the FTC would certainly be appropriate. So, I think there are a number of avenues that are open to us.

Individual AG's could go to their State legislatures. We can continue to share information at the national NAAG level, so that we can do that in our own respective States. We can encourage the Federal Government, through the FTC, to take some initiative on their part and all do it in the crucible of good feeling and good will and sharing information and priding each other as to how we could end what continues to be a pernicious and pervasive abuse that really eats away at the pocketbooks of Americans.

And again, the series that you brought to us from Las Vegas with the kinds of numbers in the \$1,500, \$1,700, \$1,800 level when it is totally unnecessary. And families are facing tuitions of \$20,000, if your child is going to go to a private education. This is big dollars. And so I think this is an important issue. It continues to be one of the most preeminent—we get hundreds of thousands of complaints every year in New York brought to the attorney general's office.

And there is automobile fraud and abuse right up there, probably No. 2 in our office next to mail order complaints that come in. And so it is an important issue that I think can be dealt with even more effectively in the days ahead because of the leadership of this subcommittee, the task force formed at NAAG and the contemplation by the FTC, trying to take some of these efforts.

Senator BRYAN. A final question to the two attorneys general with respect to the Sears settlement. Among the other things that we were told in the July hearing is that Sears would provide independent audits—I think they used the term “mystery shoppers”—to make sure that the abusive practices which generated the widespread complaints around the country were no longer being pursued.

And of course they did, as both of you have indicated, state that they would discontinue having the service writer be compensated on an incentive commission basis.

Share with me, if you know, to what extent, in the course of your monitoring, has in the first case, the service incentive compensation practice been eliminated and what has been the experience with the so-called mystery shopper to monitor the practices that are occurring out there in their own shops, if you know?

Mr. DEL TUFO. I would have to get back to you specifically about that. I would say, Senator, that the practices have been discontinued and as General Abrams mentioned, the \$50 certificates are available. The funding for this NAAG task force and other funding for vocational training of mechanics in New Jersey has been provided.

So, I do not know about that one particular item. But based upon the performance of Sears under the settlement as I know it, Sears has been responsible and, I think, enlightened. Once the practices were called to their attention, they did take corrective action.

Again, I believe the industry ought to take note of a company that does something like that. Sears has received a lot of notoriety because they are the ones that came forward and tried to resolve some things. I call on the rest of the industry to do the same thing.

Senator BRYAN. General Abrams, you are from New York?

Mr. ABRAMS. Yes. I believe as part of the agreement they have eliminated those practices and have honored that. I do not know about, as Bob has mentioned, the specifics of their monitoring. There are certain reporting requirements that were part of our settlement and we can check with them on what they have done and get back to the committee.

And although Sears has gotten the headlines, as I tried to indicate in my testimony, they should not be singled out because this has been part of an industrywide problem that has occurred in a very widespread manner. So, let us hope that the kinds of reforms and changes that they have undertaken and that they are advocating in terms of other competitors and other companies are going to take place and happen.

Senator BRYAN. Well, I think Ms. Azcuenaga, General Del Tufo, General Abrams, you have added a great deal to our record this morning. We appreciate your insights and, obviously, want to continue to work with all three of you. And I can assure you that this subcommittee will continue its interest in the subject matter and we will have some follow on conversations. Thank you very much for joining this morning, we appreciate it.

For the record, Senator Jim Exon, who is a member of this committee who could not join us this morning has asked that his statement be incorporated as part of the record of these proceedings in which the Senator does outline his concern for a piece of legislation, S. 431, the vehicle damage and disclosure act, and that will be made a part of the record.

[The prepared statement of Senator Exon follows:]

#### PREPARED STATEMENT OF SENATOR EXON

Mr. Chairman, I congratulate you on your efforts to expose auto repair fraud. I want to bring to the subcommittee's attention a related consumer auto fraud known as salvage fraud.

On February 24th, I introduced S. 431, the Vehicle Damage Disclosure Act. This legislation will help stamp out this most serious and dangerous form of consumer auto fraud.

When a car is destroyed in a crash it is generally sent to a junk yard where it is stripped for parts or in some cases rebuilt. Most states require that salvaged cars carry a designation on their title so that consumers are alerted to the condition of the auto they are purchasing.

Unfortunately, several states do not require such a designation. Fraud artists use these states to wash titles of salvaged cars clean of any salvage designation. Once a clean title is obtained, rebuilt wrecks are put on used car lots and sold to unsuspecting consumers.

Experts have estimated that car buyers lose as much as \$4 billion a year to salvage fraud and unknowingly face increased risks of injury and accident.

The Vehicle Damage Disclosure Act would require states to carry forward any salvage designation from another state and check records which are readily available to state officials. In addition, the U.S. Department of Transportation would be required to implement a nation-wide uniform title branding procedure.

I am proud to report that the state of Nebraska has one of the best consumer protection title laws. Unfortunately, my state is surrounded by states with less restrictive laws, limiting the protection Nebraska can provide to consumers.

In 1986, I authored legislation to clamp down on odometer fraud. That law requires that odometer readings be carried on auto titles. The legislation has proved to be an overwhelming success. A recent study released by the U.S. Department of Transportation proved dramatic reductions in odometer fraud. Very few cars are now sold with odometers which were spun backwards to "erase" road miles.

Passage of this legislation will prevent states from facilitating the laundering of titles, discourage criminal activity and help keep unsafe vehicles off the road.

Mr. Chairman, there are many legitimate rebuilders who provide good service and value and honest auto dealers who care for their customers. These individuals are especially disadvantaged by the fast buck operators who play the current system to wash titles of their salvage designations.

In addition, salvage fraud is used by the underworld to clean titles of stolen cars.

The CBS news broadcast of 60 Minutes exposed the severe danger and fraud involved in the sale of salvaged cars. Often salvaged autos have dangerous defects and are prone to malfunction. CBS caught auto dealers in the act of misleading customers as to the history of known salvaged autos.

It is time to clamp down on this fraud which cheats consumers out of their hard earned money and puts dangerous vehicles on the road.

The Vehicle Damage Disclosure Act would require states to carry forward any salvage designation from another state and check records which are readily available to state officials. In addition, the U.S. Department of Transportation would be required to implement a nation-wide uniform title branding procedure.

Passage of this legislation will prevent states from facilitating the laundering of titles, discourage criminal activity and help keep unsafe vehicles off the road.

Mr. Chairman, this legislation is straight forward and I would hope it would earn the support of the subcommittee and the full Commerce Committee. I ask my colleagues to join me in this effort to protect American consumers from salvage fraud.

Thank you Mr. Chairman.

Senator BRYAN. Our second, and concluding panel consists of Mr. Evan Johnson, who is the Montgomery County Office of Consumer Affairs representative, and Ms. Alyson McCarthy who put together the television footage that we began this hearing with. If I could get Ms. McCarthy and Mr. Johnson to join us at the witness table please, and then we will begin our second round of testimony.

Good morning to you both, and thank you for joining us. We will begin with Mr. Johnson and let Alyson McCarthy bat clean up this morning for us.

Mr. Johnson, we have your testimony which is made a part of the record, but we want to invite you to share with us the benefit of your own experience.

#### **STATEMENT OF EVAN JOHNSON, AUTO UNIT ADMINISTRATOR, MONTGOMERY COUNTY, MARYLAND OFFICE OF CONSUMER AFFAIRS**

Mr. JOHNSON. Thank you, Mr. Chairman. I am Evan Johnson and I am administrator of the Auto Unit in the Montgomery Coun-

ty, Maryland Office of Consumer Affairs. And we truly appreciate the opportunity today to present the perspective of a local agency on the auto repair consumer problem.

Our office, founded in 1971, has 33 employees and last year handled over 5,000 consumer complaints, the large majority of which were resolved to the consumer's satisfaction. Auto repair complaints comprise approximately 20 percent of the total—pretty close to what you are hearing from the other agencies that have testified.

While there are certainly important national and State level issues involved in auto repair, the large majority of auto repair shops continue to be distinctly local in nature. The local government consumer protection agencies are ideally situated to monitor and take appropriate action to deal with this industry.

Our office realized early on the importance of the auto repair consumer problem and was able to accomplish the passage of a county auto repair act to supplement our authority under the basic county consumer protection act. Our repair act goes beyond the Maryland Automotive Repair Facilities Act, and one of its central features is that we conduct a registration program of auto repair shops in Montgomery County.

Besides assisting in monitoring and educating the industry, shops know that the program includes the threat of loss of licensed status if they engage in auto repair fraud.

We also have the authority, both under this law and others we administer, to issue civil citations in individual cases imposing a \$500 fine for each violation of an applicable statute. These citations are, of course, contestable in court, but we have found judicious use of them to be an effective tool for a local agency, which is necessarily largely complaint directed, particularly in these days of limited resources.

We have also found benefits in having a unit that specializes in automotive complaints and issues, and a large majority of our auto unit's workload continues to be on auto repair complaints. Two of the investigators in our unit are certified master technicians by the National Institute of Automotive Service Excellence—qualifications which we believe provide major advantages in dealing with auto repair complaints and issues.

For example, one of these technician investigators handled the complaint in late 1991 in which the consumer alleged the shop had unnecessarily replaced the wheel hub and bearing assembly of a Chevrolet Cavalier. The consumer had followed our advice and obtained the replaced parts, and our investigation confirmed there was nothing wrong with them.

The merchant was cited for misrepresenting the necessity of the repairs. The shop contested the citation in court, but the county prevailed. The case became more noteworthy after the events of the last year because the shop involved was one of our Sears Automotive Centers.

We would like to describe briefly an auto repair initiative we began last fall that is probably best labeled a return to the basics. We noted from our consumer complaints and other available information that many of our repair shops were not complying consistently with some of the basic requirements of applicable laws, such

as the requirements to disclose the customer rights on work orders, to obtain additional authorization for further work, to pass along parts manufacturers' warranties, and to return replaced parts to customers. Oftentimes, it appeared that the complaints we were receiving were related to the failure to comply with such legal technicalities.

The first step in our initiative was to send to each of the over 800 repair shops in our county a thorough letter discussing their key obligations, offering our assistance in complying, and warning of enforcement action for noncompliance. That letter and the sample repair invoice we provided the shops are attached to our written testimony.

The response has been very encouraging. Upon receiving our package, a number of repair shops contacted us to take us up on our offer to review their forms and procedures for compliance with the law. The appropriate changes have already been made by them.

Other shops apparently chose not to change at that point, and as we receive consumer complaints against shops, our letter has put us in a strong position to resolve the complaint and change the shop's practices.

The initial results in our followup system indicate that we are being very successful in doing so. We believe that by continuing this initiative, we will significantly improve the practices of well-meaning shops in Montgomery County, and will have less than scrupulous shops in the bind of having to adopt procedures that will make repair fraud more difficult to get away with, or to spotlight themselves by resisting the adoption of such procedures.

Today we call on the Federal Trade Commission to play a leadership role in coordinating a major Federal, State, and local agency initiative in combating auto repair fraud, and we hope that local agencies will be given access to any funds that become available for such an initiative.

I will add that I am encouraged by what I am hearing about the task force that is going on. That concludes my prepared statement, Mr. Chairman. I would be pleased to respond to any questions you might have.

[The prepared statement of Mr. Johnson follows:]

PREPARED STATEMENT OF BARBARA B. GREGG, EXECUTIVE DIRECTOR, AND EVAN JOHNSON, AUTO UNIT ADMINISTRATOR, MONTGOMERY COUNTY, MARYLAND, OFFICE OF CONSUMER AFFAIRS

I am Evan Johnson and we appreciate the opportunity today to present the perspective of a local agency on the auto repair consumer problem. The Montgomery County Office of Consumer Affairs, founded in 1971, has 33 employees and last year handled over 5,000 consumer complaints, the large majority of which were resolved to the consumers' satisfaction. Auto repair complaints comprise approximately twenty percent of our total.

While there are certainly important national and state level issues involved in auto repair, the large majority of auto repair shops continue to be distinctly local in nature. Local government consumer protection agencies are ideally situated to monitor and take appropriate action to deal with this industry.

Our Office realized early on the importance of the auto repair consumer problem and was able to accomplish the passage of a County auto repair act to supplement our authority under the basic County consumer protection act. Our repair act goes beyond the Maryland Automotive Repair Facilities Act, and one of its central features is that we conduct a registration program of auto repair shops in Montgomery County. Besides assisting in monitoring and educating the industry, shops know that the program includes the threat of loss of licensed status if they engage in auto

repair fraud. We also have the authority, both under this law and the others we administer, to issue civil citations in individual cases, imposing a \$500 fine for each violation of an applicable statute. These citations are, of course, contestable in court, but we have found judicious use of them to be an effective tool for a local agency which is necessarily largely complaint directed, particularly in these days of limited resources.

We have also found benefits in having a Unit that specializes in automotive complaints and issues, and a large majority of our Auto Unit's workload continues to be on auto repair complaints. Two of the investigators in that Unit are certified Master Technicians by the National Institute of Automotive Service Excellence (ASE), qualifications which we believe provide major advantages in dealing with auto repair complaints and issues. For example, one of these technician-investigators handled a complaint in late 1991 in which the consumer alleged a shop had unnecessarily replaced the wheel hub and bearing assembly of a Chevrolet Cavalier. The consumer had followed our advice and obtained the replaced parts and our investigation confirmed that there was nothing wrong with them. The merchant was cited for misrepresenting the necessity of repairs. The shop contested the citation in court, but the County prevailed. The case became more noteworthy after the events of the last year because the shop involved was one of our Sears Auto Centers.

We would like to describe briefly an auto repair initiative we began last fall that is probably best labeled a return to the basics. We noted from our consumer complaints and other available information that many of our repair shops were not complying consistently with some of the basic requirements of applicable laws, such as the requirements to disclose the "Customer's Rights" on work orders, to obtain additional authorization for further work, passing along parts manufacturers' warranties, and to return replaced parts to customers. Oftentimes, it appeared that complaints were related to the failure to comply with such legal "technicalities."

The first step in our initiative was to send to each of the over 800 repair shops in our County a thorough letter discussing their key obligations, offering our assistance in complying, and warning of enforcement action for noncompliance. That letter and the sample repair invoice we provided the shops are attached to this testimony. The response has been very encouraging.

Upon receiving our package, a number of repair shops contacted us to take us up on our offer to review their forms and procedures for compliance with the law. The appropriate changes have already been made. Other shops apparently chose not to change at that point. As consumer complaints come in against such shops, our letter has put us in a strong position to resolve the complaint and change the shops' practices. The initial results in our follow-up system indicate we are being successful in doing so.

We believe that continuing this initiative will significantly improve the practices of well-meaning shops and will put less than scrupulous shops in the bind of having to adopt procedures that will make repair fraud more difficult to get away with or to spotlight themselves by resisting the adoption of such procedures.

We call on the federal Trade Commission to play a leadership role in coordinating a major federal, state, and local agency initiative in combating auto repair fraud. We hope that local agencies will be given access to any funds that become available for such an initiative.

That concludes my prepared statement, Mr. Chairman. I would be pleased to respond to any questions you may have at this time.

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LETTER FROM MONTGOMERY COUNTY GOVERNMENT TO REPAIR SHOPS

OCTOBER 20, 1992.

*Attn: Owner and Service Manager*

DEAR MONTGOMERY COUNTY AUTO REPAIR LICENSEE: The recent controversy over Sears' auto repair practices has highlighted how important consumer trust is to the automobile repair business. Many of the fundamental requirements of the consumer laws governing the automobile repair industry foster communication and consumer trust. Unfortunately, we are seeing many violations of these fundamental requirements and a corresponding decline of trust in the industry. This letter is to remind you of these key requirements. Rededicating your business to complying with them will increase the trust consumers have in you—as well as avoid potential problems with our agency.

For your reference, we enclose copies of the county and state automobile repair acts, which govern repairs in the county. Although many shops are familiar with these laws, review is always helpful. In addition, we want to highlight the following key provisions of these and other applicable laws.

*Return Replaced Parts*—Both the county and state repair laws require that replaced parts be returned to consumers. Consumers do not have to ask to have their replaced parts returned; each is to be returned unless the customer expressly states that he or she does not want it. (Written proof of this waiver is best, and our enclosed sample Invoice Includes a space for the consumer to waive this right.) Obviously, good business practices dictate that dirty parts be appropriately packaged so they don't soil the consumer's car.

The only exception is for parts that are required to be returned to a manufacturer or distributor under a warranty agreement. Core parts are not exempt from this requirement. When a core part is involved in a repair you should explain to the consumer how much money they can save if they let you retain the part. They may then opt to waive their right to the part. If they do waive their right to a core part you should still make the old part available for inspection by the consumers or their representatives.

Of all your obligations to a customer, probably none is more important than returning replaced parts. In fact, the highest court in Maryland has held that when key parts in a repair job are not returned the customer is not obligated to pay for the repairs. *Design & Funding v. Betz*, 292 Md. 265, 438 A.2d 1316 (1981). And we will be taking enforcement action when we find that a shop has violated this requirement.

*Estimates*—All shops in Montgomery County should know that consumers have a right to an estimate upon request and to a written estimate for repairs exceeding \$25.<sup>1</sup> (You should have posted a sign stating this right. If not, we have them available for \$10 each.) But there are important requirements for estimates beyond these basics.

*Charges for estimates must be disclosed*—You may charge a reasonable fee for giving estimates but only if the fee is disclosed to the customer beforehand. This disclosure has to make it clear to consumers what they are getting into. If providing the estimate requires teardown, the disclosure must also state the cost of reassembly if the customer chooses not to have you proceed with the work. Similarly, if you have a minimum checkout fee, it must be disclosed ahead of time.

*Recording Authorizations*—Customers may not be charged for unauthorized work. If work was not originally authorized you may get the customer's additional authorization by oral permission, but county law requires that the shop document the additional authorization in writing. To help prevent later questions, it is best to get some type of personal ID, such as a social security or driver's license number, from the consumer at the time of the oral authorization and to include this on your documentation. If a complaint raises questions of authorization we will be asking to see the hard copy documenting the authorization.

Similarly, as most shops know, if work is going to exceed an estimate by more than 10 percent, the consumer must authorize the new estimate beforehand. This is not a blanket authorization to exceed an estimate by up to 10 percent. There should be a documentable reason anytime an estimate is exceeded. We will be evaluating that explanation whenever a complaint involves an alleged increased estimate.

#### DISCLOSURE OF CHARGES

*Labor Charges*—We continue to get many complaints and questions about how labor is calculated. County law requires that the repair invoice disclose whether labor is charged by clock hour, flat rate manual, or other flat rate measure. Many invoices just say "flat rate used" or similar language. This is not sufficient to make customers understand the system. The disclosure needs to be as specific and descriptive as possible. For example, our enclosed sample invoice says, "Unless otherwise specified, labor time billed is flat rate time estimated for each job in industry manuals and not actual time spent." We are not wedded to this language but we believe it is a much better description of the flat rate manual system.

If the lack of such a specific description is the only flaw in your invoice (see the "Invoices" section of this letter) it may not be worth changing, but we are calling on every shop to make better disclosures of the labor billing system before the work

<sup>1</sup>Body shops, before beginning work, also are required by the state Automotive Crash Parts Act to give the customer a list of the replacement parts it intends to use, specify whether they are "genuine" (OEM) or "aftermarket," and if any are aftermarket include the statement:

"This estimate has been prepared based on the use of aftermarket crash parts that are not manufactured by the original manufacturer of the vehicle or by a manufacturer authorized by the original manufacturer to use its name or trademark. The use of certain aftermarket crash parts may modify the original manufacturer's warranty on the crash parts being replaced. Upon request of the customer, the body shop shall provide, if available, a copy of any warranty for an aftermarket crash part used."



is done. This should include signs posted where customers authorize repairs. If a shop has a night-drop system, a sign should also be by the night-drop box or the disclosure made on the night-drop slip. Our Auto Unit staff are available to give you assistance in wording these or any other disclosures.

*Miscellaneous Charges*—The customer must also have notice, before work is started, of any miscellaneous charges, such as shop supplies or hazardous waste disposal. The County Code considers a conspicuous sign to be evidence of notice, so these disclosures can be included on the same sign describing the labor billing system. The portion on miscellaneous charges must state that the charge will be made and the method of its computation. As with labor charges, there also need to be disclosures to give notice to customers making night drops.

Miscellaneous charges also should have some relationship to the work performed on a particular car. For example, if the work is a minor adjustment not involving any potential waste, a hazardous waste disposal charge is inappropriate and will surely generate consumer complaints.

*Pass Along Parts Manufacturer's Warranties*—Most shops summarize their own parts and labor warranties on the invoice; but in many cases the parts are also warranted independently by the manufacturer and we rarely see those warranties passed along. If the parts are warranted to the consumer by the parts manufacturer, it is the shop's legal duty to pass along to the consumer a copy of that warranty. In many cases the manufacturer's parts warranty is longer than the shop's and gives the consumer additional rights, such as the right to get warranty work done at other authorized shops. If you have difficulty getting copies of the manufacturers' warranties to pass along, please let us know as we consider this a very important issue and will be happy to take it up with the supplier or manufacturer.

*Vehicles Left On Lot*—We receive a number of complaints arising from vehicles that are left on repair shops' lots.

*Storage Charges*—Consumers must have notice of the shop's storage charge policy before they can be imposed. Again, a conspicuous sign is evidence of notice. Even if you give notice, storage charges may not accrue until 24 hours from the notification to the consumer that services are completed, unless otherwise agreed.

*Removal of a Vehicle*—There are instances when a shop wants a vehicle off its lot. In the past, you might have just called towers to have the vehicle towed and impounded by them. Since the summer of 1990, however, the County has had in effect Chapter 30C of the Code (copy and summary enclosed), which regulates towing from private property without the consent of the vehicle owner. This Chapter applies to towing off of your lot and makes it more complicated than just calling a tow truck. The main requirements of this law are: 1) A vehicle owner must have been warned by signs on the lot of the parking restrictions and towing. (For lots over 100 places, stickers may be attached to the vehicle.) 2) You must have a standing written contract with a tower to do such towing. 3) You ordinarily must specifically authorize each tow off your property. Clearly, if you are going to engage in this type of removal of vehicles you need to familiarize yourself with the law and take the necessary actions first.

An alternative for having vehicles removed from your premises is to proceed under the state Abandoned Vehicles Law. (Md. Transp. Code Ann. §§25-201-25-210.) If you believe a vehicle left on your property may qualify as "abandoned" you may contact the Abandoned Vehicle Section of the Montgomery County Police Department at 840-2454. That section will give you more information on its procedures, but ordinarily a consent form must be signed by the shop's owner or manager and then the police will put a notice on the vehicle for 48 hours before removal. The police will then have the vehicle removed and impounded at no cost to the shop. The Abandoned Vehicle Section will also accept "cannibalized" vehicles but they are towed at the shop's expense and a signed consent form is required. Again, contact the Abandoned Vehicle Section for full information.

*Invoices*—There is a saying that "good paper makes good friends." Unfortunately, many repair shops give consumers repair orders/invoices that do not provide the legally required information necessary for good communication with the consumer. Enclosed is our sample invoice, which includes the key disclosures for repair invoices (indicated by the black circles with letters) and, just as importantly, explains the requirements. As the sample notes, invoices do not have to be in this form, but the required disclosures must be made clearly and conspicuously, on body shop forms as well as those of straight mechanical shops. Local affiliates of national or regional chains also must comply with these requirements.

Some shops may use an initial work order and a separate final invoice. In that case, the "Customer's Rights" statements need to be on the work order the consumer signs to authorize the work. They also need to be on night-drop envelopes.

But even the best invoice form isn't enough if it is filled out hap-hazardly. Note, for example, that "O" on our sample invoice highlights that each final invoice is supposed to contain the customer's instructions or description of the vehicle's symptoms and the shop's diagnosis of the problem. Many shops don't bother to do this on the final invoice, only listing what they did. This lack of communication must change. Perhaps even more important is the requirement noted in "P" on our sample that the shop's owner, manager, or designee (other than the mechanic(s) doing the work) sign to verify that the vehicle was tested or test driven as necessary and the mechanic's work was done satisfactorily. We see many repair invoices where this was not done. This reflects very poorly on quality control and puts the shop in an extremely poor position when faced with a comeback type of complaint.

We will be taking enforcement action against shops with invoices that fail to comply with basic legal requirements. It is your responsibility to review the enclosed materials and make the necessary changes in your forms and the way you fill them out. If you have noncomplying forms, you don't necessarily have to throw them out; you can use rubber stamps or attach a second page with the necessary disclosures. If you have questions, feel free to contact the Auto Unit. If you wish you may submit a copy of your invoice for our review and we will tell you what, if anything, needs to be changed. Many shops have already done this. If you're moving on your own to change your forms, it's a good idea to run a sample by us before you invest too much in the project. We'll work with you and be as flexible as possible, but the required disclosures must be made. And please, remember that state law requires you to give the consumer an invoice any time you work on a car, even if there is no charge such as with warranty work.

*Your Warranties*—Our sample invoice reflects the requirement that the invoice specify any express warranty on parts and labor. We have used 90 days/4000 miles in our sample, but you may give a longer or shorter express warranty if you wish. In fact, you don't have to give any express warranty of your own (but as noted previously you do have to pass along the warranty of the parts manufacturer or supplier).

If you give your own express warranty, all limitations must be stated and it is advisable to be as specific as possible about what is covered and what you and the consumer are obligated to do if a problem arises. Many shops have chosen to do this in a separate warranty document that they give the consumer with the final invoice, or on the back of the invoice itself.

In addition to express warranties there are implied warranties. In Maryland, whenever you sell a part to a consumer—even a used one—there is an implied (unstated) warranty that it is fit for ordinary use and will last a reasonable length of time. Maryland law does not allow implied warranties to be disclaimed or limited in any sale of goods or service to a consumer, so an invoice you give to a consumer should not contain language like "seller disclaims all warranties." If you have questions about warranties, feel free to call the Auto Unit. Also, "A Businessperson's Guide to federal Warranty Law" is available free from the federal Trade Commission, Public Reference Branch, Washington, DC 20580, (202) 326-2222.

Most of the items discussed in this letter are things that should be done merely as a matter of good business practices. In Montgomery County they're not only good business, they're also the law. Thank you for your attention and, again, please feel free to contact us if we can be of any assistance.

Very truly yours,

EVAN W. JOHNSON,  
Administrator, Auto Unit.

<p><b>NOTICE TO CUSTOMERS</b></p> <p>1 Unless otherwise specified, labor time billed is flat rate time estimated for each job in industry manuals and not actual time spent.</p> <p>2 All parts and labor are warranted for 90 days or 4000 miles, whichever occurs first.</p> <p>3 All labor performed and parts replaced were necessary to perform repairs.</p> <p>4 All parts are new unless otherwise specified. U = Used / R = Rebuilt.</p>	<p><b>BUSINESS NAME</b> Address Phone</p>	<p>NAME <b>M</b> DATE OF ORDER ADDRESS <b>M</b> CITY <b>M</b> PHONE MONTH/YEAR CD REG NO ORDER WRITTEN BY YEAR MAKE AND MODEL <b>H</b> SERIAL NUMBER <b>M</b> ODOMETER READING <b>M</b></p>	<p><b>CUSTOMER'S RIGHTS</b></p> <p>1. You are entitled to a written estimate upon request if repairs will exceed \$25.00. Do you want a written estimate? YES <input type="checkbox"/> NO <input type="checkbox"/></p> <p>2. You may not be charged an amount more than 10% greater than an estimate without your consent.</p> <p>3. You are entitled to the return of any replaced parts except those that must be returned to the manufacturer under warranty agreement if you do not want the parts, initial here: _____</p> <p>4. Repairs not originally authorized by you will not be charged to you without your consent.</p> <p>Customer's Signature I hereby authorize the repair work listed above and your employees may operate the above vehicle for purposes of testing, inspection or delivery.</p>
<p>QTY. PART NO. &amp; DESCRIPTION AMOUNT</p>	<p>WORK DESCRIPTION</p>	<p>TIME AMOUNT</p>	<p>AMOUNT</p>
<p>TOTAL PARTS</p>	<p>TOTAL LABOR</p>	<p>TOTAL SUBLET WORK</p>	<p>TOTAL DUE</p>
<p>GALS. GAS</p>	<p>LABOR</p>	<p>PARTS</p>	<p>TAX</p>
<p>QTS. ENGINE OIL</p>	<p>GAS/OIL</p>	<p>SUBLET</p>	<p>TOTAL DUE</p>
<p>TRANS. OIL</p>	<p><b>P</b></p>	<p><b>P</b></p>	<p>TOTAL DUE</p>
<p>TOTAL GAS/OIL</p>	<p>I certify that this vehicle has been tested or test driven when needed and that the mechanic's work was performed satisfactorily.</p>	<p>manager's Signature</p>	<p><b>THANK YOU</b></p>

**A**

**B**

**C**

**D**

**E**

**F**

**G**

**H**

**I**

**J**

# AUTO REPAIR INVOICE

## KEY TO THE INVOICE

**A** You must declare whether you charge for labor by the clock hour or use the flat rate method. The clock hour, the invoice shall itemize the labor charges and also state:

- Time spent on each service.
- Labor cost of each service.
- Total time and total labor charges

(County Code 31A 11(a)(5) and (6))

**B** Every final invoice or work order shall specify any express warranty of parts or workmanship if you place any limitations on the warranty, such as "Customer must return to this shop for all warranty repairs," the limitation must also be apparent in writing on the repair order (County Code 31A-11(b)(9))

**C** The final invoice shall contain:

- The name, initials, or number of the mechanic or mechanics.
- The registration number of the shop.
- A statement that the repairs charged for were needed and were performed

(County Code 31A 11(a)(7))

**D** The invoice must specify if any used or rebuilt parts were supplied and so, these parts must be clearly identified (County Code 31A 11(b)(2))

**E** The auto repair invoice must have a separate section with the heading "Customer's Rights". This section must be prominently displayed and contain the information listed in F through I below (MD Com Code 14-1008(a),(b))

**F** You must give every customer, upon request, a written estimate for repairs costing more than twenty-five dollars. You may charge a reasonable fee for making the estimate provided (2) (1) needed a reasonable time for diagnosing the problem and charge the customer for the estimate unless you describe the job beforehand (County Code 31A 10(a))

**G** You cannot exceed a written or verbal estimate by more than 10% without the customer's authorization. If the actual charges for the repairs or maintenance will exceed the total written or oral estimate by more than 10%, you must immediately notify the customer by telephone, telegram, mail, or written notice of the new estimated charges. The customer may then authorize the new estimate charge or cancel the order for repairs. You must confirm that authorization or cancellation in writing, and this can be done on the repair order. You should note the name of the person you talked to, the date, the time, and the new estimated charge

If the customer cancels the repair, you must release the unrepaired or partially repaired motor vehicle as soon as possible. It must be in a condition reasonably like you received it unless it is impossible to reinstall removed parts. You are allowed to charge the customer for any reasonable repairs or services you have performed (County Code 31A-10(c))

**F** You must return all replaced parts to the customer unless (1) you are required to return them to the manufacturer or distributor under a warranty agreement or (2) the customer gives you oral or written consent to dispose of them. If a customer wants parts with a core charge returned, you can require the customer to pay the core charge before you return the parts (County Code 31A-13)

**G** You must get the customer's consent to charge for repairs that he or she did not originally authorize (MD Com Code 14-1008(a)(3))

**H** You may not charge the customer for repairs he or she did not originally authorize or request. You may charge the customer for additional repairs only if you receive the customer's written or oral permission (MD Com Code 14-1006)

**I** All repair and maintenance work done by you or your employees shall be recorded on an invoice detailing and describing all services or work performed, all parts supplied, and the exact charge for each part or service (County Code 31A 11(e), MD Com Code 14 1003)

**J** The invoice must include the parts numbers of all parts replaced or installed (County Code 31A 11(a)(3))

**K** The invoice shall state the name and address of the owner and the motor vehicle's year, make, tag number, and odometer reading (County Code 31A-11(a)(1))

**L** Upon request, you or your employee shall give the customer a written estimated completion date for repairs or services. You will not be liable for breach of the written or estimated completion date if a delay is caused by an act of God, strike, unexpected illness, or an unexpected shortage of labor or parts (County Code 31A-12)

**M** Every final invoice or work order shall contain the customer's instructions or description of the vehicle's symptoms (County Code 31A-11(a)(9))

**N** The final invoice shall be signed by the repair shop owner, manager, or an authorized representative. That person shall verify that the motor vehicle has been tested or test driven when needed and that, in his or her opinion, the mechanic's work was performed satisfactorily (County Code 31A 11(a)(8))

Montgomery County Government  
Office of Consumer Affairs  
100 Maryland Avenue  
Rockville, MD 20850  
217-7373

## INFORMATION FOR REPAIR FACILITIES

Both State and County law require you to give the customer a written invoice showing the work you have performed on a motor vehicle. You must provide this invoice even if there is no charge for the work. The law also requires the invoice to contain certain information.

Below is a sample invoice containing all the information required by law. You can use it as a model, but your invoice doesn't have to look exactly like our sample. You can change the size of the invoice and the location of each item, but the disclosures must be clear and conspicuous and all legally-required information must be included.

On the sample invoice there are letters of the alphabet that correspond to sections of the law at right. For example, the letter E next to "Customer's Rights" on the invoice corresponds to the letter E in the KEY TO THE INVOICE, where you'll find a summary of the law requiring the invoice to have a separate section called "Customer's Rights."

The KEY TO THE INVOICE has plain language summaries of the motor vehicle repair laws plus some additional explanatory information. The summaries are followed, in parenthesis, by citations that tell where each section appears in County or State law. To request a copy of the law, call us at 217-7373.

Senator BRYAN. Thank you very much, Mr. Johnson. Ms. McCarthy, it is a pleasure you have you here with us. That was an excellent piece of reporting, as I shared with you privately, and we appreciate your coming back here to share it with this committee.

Now, we would invite your comments and testimony in terms of where you think we ought to go from here.

## STATEMENT OF ALYSON MCCARTHY, CONSUMER INVESTIGATIVE REPORTING UNIT, KTNV-TV, LAS VEGAS, NV

Ms. MCCARTHY. Thank you Mr. Chairman, Senator Bryan, it is a real pleasure to be here today and be able to share with you some

of our research in the area of car repair, which you have already seen.

My name is Alyson McCarthy. For 3 years now I have headed up a consumer investigative reporting unit for KTNV-TV in Las Vegas, NV. Contact 13 is a consumer information, referral, and problemsolving service. Through our hotline, we receive hundreds of calls and letters every week.

The single most common complaint remains car repair problems. With few laws to protect the consumer, these car owners lose hundreds, and as you have seen, even thousands of dollars in each case—money they cannot afford to lose. As cars become increasingly more complicated, the consumer finds himself at an ever increasing disadvantage.

To give you an example of what we did not have a chance to include in our reports, I went through the last 100 letters concerning car repair complaints that came in us, most since our investigation aired, and I have listed here some of the most common auto repair ripoff scenarios for you.

The first, heading the list definitely, is the unnecessary repair. For one example, a woman went into a shop with an engine light on. She was given an estimate of \$1,300 to \$1,500 to replace what was a perfectly good engine. She was advised by her father to take the car elsewhere, and fortunately she did. A second opinion turned up the real problem, a leaking water pump. The actual cost to replace it was \$300.

Doing repairs without prior customer authorization is another problem—charging for parts and labor that are not done. In one case, a car owner was charged for an alternator that was never replaced, and in many cases it is confirmed by other mechanics.

In another instance, a woman claims that her old engine was simply cleaned, repainted, and put back into her car. Again, another mechanic told her that that is likely what happened when she had the same problem.

Not honoring even written warranties is another problem. Mechanics often assume that the consumer will not follow through with what is really their only recourse, and that is small claims court action. Many consumers do not. We encourage them to do so.

Car being held for ransom—this is a common practice. The consumer is not allowed to leave with their vehicle until the bill is paid in full, even if it is being disputed. Again, the only recourse they have is small claims court after the fact.

Repairs taking way too long, even weeks longer than originally told or originally agreed to, making the car owner go without their needed transportation.

Incompetent mechanics—these mechanics do not repair the car correctly the first time, causing the car owner to have to go back repeatedly. This is a problem—in some cases the oil has not been replaced during a simple preventative oil change. As you saw, the engine froze up, causing that car owner to pay over \$2,000 to have his engine replaced.

Now, that car owner was encouraged to go to small claims court. That car owner won the case, but to this day he cannot collect, because that is a whole other ball of wax.

Suspected sabotage—car owners who take their car in for preventive maintenance such as a tune-up or an oil change. Days later, they have a mystery leak, or days later their car breaks down.

Charging more than the written estimate, above the 5 percent of \$40 as allowed by current Nevada State law.

Companies closing shop and opening up under another name. Again, leaving the consumer without any recourse. This was the case with the transmission shop that you saw in our piece. They closed up shop about 2 weeks after we aired, and reopened under a new name; lots of balloon, lots of fanfare.

I think it is important to note that most of the people who come to Contact 13 are seniors on fixed income, or they are low-income families who are, in many cases, just scrapping by and they just do not have the hundreds or thousands of dollars that they end up losing for faulty or unnecessary repairs.

This comment by one Las Vegas car owner I think sums up the frustration pretty clearly. "It is terrible when you take your car to a company and pay your hard earned money to be taken to the cleaners." But for them to continue doing this over and over to people who put their lives in their hands is as bad as a thief who robs you, except this is done in front of your face. I think it is about time for someone to put a stop to unethical and unreliable companies who are being allowed to stay in business. How can a consumer possibly be made aware of such ripoff joints?

Of those 100 letters that I reference here, 70 people actually included receipts of the money that they felt they been robbed of, lost. The total amount exceeds \$65,000 in just those 70 cases.

I think that pretty much sums up what is going on in Las Vegas. I think what Attorney General Del Tufo said was particularly true. This is a problem that could be found in any community, certainly not Las Vegas alone. And I think the idea of the use of stings is particularly important in getting to the bottom of this problem because that was one reason we decided to launch our investigation was we were not getting anywhere, and we are a problemsolving unit.

But oftentimes we will contact the car repair shop and we will say to them, "What is your side of the story?" And a lot of times they will just tell us, in our opinion the job needed to be done, in our opinion the work needed to be done. And there is really very little you can do to prove otherwise for the consumer.

And I think the use of the stings is where we really got our first results. By putting the fear of God into some of these car mechanics, I think we have gone a long way in helping to at least clean up the industry in part in our own community.

Thank you.

[The prepared statement of Ms. McCarthy follows:]

#### PREPARED STATEMENT OF ALYSON MCCARTHY

My thanks to Chairman Senator Richard Bryan and subcommittee members for inviting me to share with you my research in the area of auto repair fraud.

My name is Alyson McCarthy. I've headed up a consumer investigative reporting unit for KTNV-TV, an ABC affiliate in Las Vegas, Nevada for three years.

Contact 13 is a consumer information, referral and problem solving service. Through our hotline, we receive hundreds of calls and letters every week from the community. The single most common complaint coming over our hotline is car repair problems.

With few laws to protect the consumer, these car owners lose hundreds, often thousands of dollars each, with little or no recourse under the law.

And with cars becoming increasingly more complicated, the consumer is at an ever increasing disadvantage when trying to self-diagnose car problems.

My staff went through our last 100 letters concerning car repair complaints. The most common scenarios are as follows:

1. Making unnecessary repairs: In one example, a woman is given an estimate of 1300-1500 dollars to replace a perfectly good engine. She was advised by father to take the car elsewhere. A second opinion turned up the real problem \* \* \* a leaking water pump \* \* \* actual cost came to 300 dollars.

2. Doing repairs without prior customer authorization.

3. Charging for parts and labor that is not done: In one case, a woman was charged for alternator never replaced \* \* \* confirmed by another mechanic. Another consumer claims she was charged for a new engine, but her old engine was simply cleaned, repainted and put back in car.

4. Not honoring warranties: Mechanics assume consumer won't follow through with small claims court.

5. Car being held for ransom: Consumer is not allowed to leave with vehicle without paying bill in full even if the bill is being disputed.

6. Repairs taking too long: Days, even weeks longer than originally told.

7. Incompetent mechanics: These mechanics do not repair the car correctly, causing car owner to come back repeatedly for work to be done right. In some cases, oil has not been replaced during oil change, causing engine to freeze up on the way home from the shop.

8. Suspected sabotage: Car owners who take their car in for preventive maintenance, such as a tune-up or oil change. days later, they have an oil leak, or car breaks down.

9. Charging more than written estimate \* \* \* above the 5 percent or 40 dollars as allowed by state law.

10. Companies close shop and open up under a new name \* \* \* leaving consumers without any recourse.

It's important to note that most of the people who Contact 13 are senior citizens on fixed incomes and low income families. In many cases, they are "scraping by," and certainly can't afford to lose hundreds or thousands of dollars in faulty or unnecessary repairs.

This comment by one car owner sums up the frustration: "It is terrible when you take your car to a company and pay your hard-earned money, to be taken to the cleaners. but for them to continue doing this over and over to people who put their lives in their hands, is as bad as a thief who robs you, except this is done in front of your face. I think it is about time for someone to put a stop to unethical and unreliable companies who are being allowed to stay in business. How can a consumer possibly be made aware of such rip-off joints?"

Of those 100 letters, 70 people actually included receipts or estimates of how much money they have lost. The total amounts exceeds 65,000 dollars in just these 100 cases.

I would be happy to answer any questions you may have.

Once again, I thank you Senators for your time today.

Senator BRYAN. Thank you very much. That was very illuminating. I take it that perhaps in terms of your ranking of the problems, that list—is that roughly kind of a one through nine in terms of the priority? The first and the most significant, you pointed out, was the unnecessary work, at least in your own experience.

Ms. MCCARTHY. Definitely. The unnecessary repair appears in our case to head the list.

Senator BRYAN. Looking at the situations as you found them, what do you think is the most effective way for dealing with it? The problem is out there, no question about it. Sting operations do, in my judgment, serve a deterrent value, as you point out. What else, as you see it, needs to be done? What can we do to really prevent this sort of egregious misconduct?

Ms. MCCARTHY. In my opinion, I think that threefold approach is an excellent idea that was represented by Mr. Del Tufo as part of the task force approach. I think that is an excellent idea.

I think that for so long there has been a attitude of a lack of enforcement. There is an unchecked attitude out there on the part of the auto mechanic that for so long they have been able to get away with what they are doing without anybody looking over their shoulder, without anybody telling them that they cannot do it, that there is a real strong feeling that they can do whatever they want. I think that just the actual threat is enough to get us off to a good start.

Senator BRYAN. Mr. Johnson, you bring a somewhat unique perspective. Our hearing this morning has been structured as you, Ms. McCarthy, no doubt have observed, that we will have all three levels of government involved and the media, each of which have an opportunity to play a very meaningful role in this problem.

Maybe you could put this in a little perspective without going into great detail. But you have, as your testimony indicates, gone further than the State law in Maryland by adopting at the county level some initiatives of your own and your office operates, I presume, under the aegis of that authority.

Tell us just very generally what the Maryland law is, the State law. What does the State law require, if anything, car repair businesses to do, and what options are available, remedies are available to a motorist, a consumer who feels that he or she has been ripped off at the State level, and then I want to put the local piece in place.

Mr. JOHNSON. The Maryland State auto repair law is a fairly brief law. The main provision is that it requires customer rights to be on the initial work order. The rights are, you have a right to a written estimate if it is going to be more than \$50, that they cannot exceed the estimate by more than 10 percent, that you have the right to have your parts returned, and that work not originally authorized by the customer may not be billed without obtaining further authorization.

That is the core of the State law. It does not do a whole lot more than that.

Senator BRYAN. Let us go over those pointers. A disclosure provision as to the rights of the consumer. The second piece again, if you would, please?

Mr. JOHNSON. I was simply summarizing what the disclosure is. And there are four key rights that they highlight, which are the estimates, the right to parts, not to have the estimate exceeded, and that you have to authorize additional work.

Senator BRYAN. Now, what is the enforcement mechanism? It is nice to have those rights, but if there is not an enforcement mechanism—again, I am not trying to be critical of Maryland law, I am trying to put this into perspective. I suspect that the pattern in Maryland exists elsewhere that you have got State law that purports to confer rights upon consumers, but without an enforcement mechanism it is somewhat meaningless.

As Ms. McCarthy points out, a lot of the people that Contact 13 hear from are people that are not particularly sophisticated people that are on fixed incomes, people who do not have the access to the courts, and the panoply of all the theoretical legal rights that might be available. Is there an enforcement mechanism as such, Mr. Johnson, in the Maryland State law?



Mr. JOHNSON. Well, the enforcement is that it is part of the Consumer Protection Act, which the Maryland Attorney General enforces. In Montgomery County, we would indirectly enforce that, saying that a violation of the State act would also be a violation of our county act. But too often, it is just as we have been hearing here. People have to go to court.

I will say, I feel in Maryland that the attorney general does have a good consumer complaint handling program, and we are proud of our own program, that we are able to resolve many things without going to court.

But in terms of violating those rights you are talking about, it happens a lot of times. It is very difficult to document. What our initiative is focussed on is that a lot of people are not getting those rights given to them. And at least the starting point is to make sure that the procedures are proper and you give people a chance to be informed, more informed than they are.

Senator BRYAN. How does your office function with respect to the Maryland Attorney General's office? In other words, a consumer comes in with any one of the types of problems which was illustrated in Channel 13's television footage—any one of those is a rip-off.

Now, does the consumer typically go to the Maryland Attorney General's consumer protection division, or however it is characterized, or do they go to your office in Montgomery County, or do they go to both? In other words, how do you coordinate so the Maryland Attorney General's office is not working a case, you all are working a case, and you are not aware that each of you are working it?

You have limited resources. There are many more complaints, I am sure, than you have the resources to handle. And to do duplicative or redundant work is the last thing in the world you want to do in terms of providing protection to consumers.

Mr. JOHNSON. Sir, we have some informal arrangements. I think you will find that most Montgomery County consumers will come to us before they go to the State. I often find that consumers cc letters, and oftentimes when the attorney general's office finds that it has been filed with Montgomery County we touch base, and they normally defer to us. I think that they would say that their resources are sufficiently taxed with complaints from the rest of the State. So, we have that sort of informal coordination. And we talk often, and do some initiatives together.

Senator BRYAN. Of the regulations that your Montgomery County ordinance provides, what do you find most helpful in assisting consumers?

Mr. JOHNSON. Other than our existence to mediate and arm twist, the most effective thing that I think should be considered if people are looking at doing new local or State statutory initiatives, we find the citation authority to be useful to a local agency in individual complaints. We do not have to prove a broad pattern or practice but if we find a clear violation in an individual case we can issue a fine. Obviously, we can use the threat of it to resolve a complaint, and we find that a really effective tool, in many cases.

Senator BRYAN. So, I mean, to use the idiom of the street, that civil citation is a very effective hammer for you in order to bring the offending auto repair shop into this mediation process. I pre-

sume if you were just a mediator and did not have any ability to pursue a civil penalty, that there would probably be less cooperation. Is that a reasonable assumption?

Mr. JOHNSON. I think that is reasonable. I think our resolution rate would be lower without that authority, no doubt about it.

Senator BRYAN. And give us just some general perspective. I mean, if you have got, in a given period of time, 100 such complaints, and let us assume that theoretically you validate all, but there are 100 legitimate grievances out there that cry out for relief, out of the 100, how many are you able to solve with this mediation process?

Mr. JOHNSON. Approximately 70 percent of the complaints that come in. And I must say that we only screen them to be sure there was a transaction in Montgomery County, but we do not screen them for validity, so probably some of the 30 percent that we do not resolve may not be terribly meritorious complaints. But we do resolve a large percentage of them.

Senator BRYAN. Ms. McCarthy, the attorneys general commented that sting operations are expensive. If it is not privileged or proprietary information, do you have an idea as to what the sting operations that you all conducted, how much that cost?

Ms. MCCARTHY. We ended up doing two full stings, the stings that actually appeared, although we took our vehicles into 10 different shops. Now we were fortunate in that the big up-front money, the \$800 transaction, was refunded to us quite promptly, so we got that money back. I would say we investigated—I mean, we probably invested about \$400 that was actually lost. What do you say, Clay? Is that pretty close? Clay was the photographer in that investigation, as well.

Senator BRYAN. But in terms of your up-front cost, you were fortunate, I know, in the one case to get the \$800 back.

Ms. MCCARTHY. Right. Exactly.

Senator BRYAN. But, I mean, in terms of what was your budget going in? I mean, was it a couple of thousand?

Ms. MCCARTHY. That is about right. We estimated about a couple of thousand dollars, based on what we were hearing beforehand, and that was a lot of these estimates before the mechanics would even open the hood was going to be \$1,200, \$1,500, all the way up to \$1,800. We thought, in the instance with the transmission sting, we might have to put out \$1,800, so—to replace a transmission.

Senator BRYAN. In terms of what causes the problem, obviously, some of it is just simply outright fraud. Some of it is greed. Some of it, I suppose, is based upon these contests or these incentive compensation programs for people that otherwise would play by the rules recognize that, gee, I can make a few extra bucks and, you know, my expenses are kind of high this week, and maybe—

Ms. MCCARTHY. Christmas is around the corner.

Senator BRYAN [continuing]. Yeah, Christmas is just around the corner or the—you know, the anniversary or the kids birthday, the tuition is due at school the next semester, all of those things. Your thoughts at all in terms of what really is the underlying cause of all of this.

Ms. MCCARTHY. Well, I am going to refer again to the one transmission sting that we did do, because in looking back at that I was

trying real hard to try and determine what the motivation there was. And at first I thought it was dishonesty. I thought that they perhaps saw that this was an excellent opportunity to make some bucks.

Senator BRYAN. Just naked greed, yeah.

Ms. MCCARTHY. Exactly. And again, I think the commission factor is very important here, like the one mechanic had said, they will drive up their sales to keep those commission rates up there by performing—not necessarily charging you for a transaction that does not take place, a repair that is not made, but charging for a repair that was not needed at all. And in those cases, the work gets done, but the act, itself, is just as dishonest, is it not?

Senator BRYAN. Sure.

Ms. MCCARTHY. But in retrospect, with the one transmission sting that we did do, I think part of the problem was incompetency and the fact that these mechanics were rushing. And as he admitted, the had two mechanics working on the same car. By the time the first mechanic pulled the plugs, he later admitted to us that one of the plugs was, in fact, loose. In fact, very loose. And in this instance, the wire leading into the transmission is very secure. It is not loose. If it is loose, it is disconnected because it snaps on and you have to physically unsnap it to take it off.

At that time, I said "Well, if it was loose, why would you not, that early on in the procedure, simply plug it back in and see if the car is no longer stuck in third?" Never even crossed his mind to do that. They had already taken the job. The job was to be done. He had several jobs waiting to be done after that one.

Second mechanic comes in by the time the transmission is pulled, and of course, he does not know anything that the first mechanic has done. So, I think that is what led to that particular problem.

Senator BRYAN. You know, we have all smiled a little bit at some of that footage, and, you know, the outraged response of people who have been victimized, but it may be—it may appear to be funny if that were not your car, that not the circumstances that you find yourself in where maybe your only means of transportation in a community like Las Vegas without a car, you are immobilized.

Ms. MCCARTHY. Right.

Senator BRYAN. What does all of this mean in human terms? I mean, we have talked about the technical nature of it and what the attorneys general can do and the Federal Trade Commission and office like Mr. Johnson's. What does this really mean in human terms?

Ms. MCCARTHY. I think it is devastating to a lot of the people who find themselves victimized by car repair, for a couple of reasons. Not only are you depriving them of money that is needed to raise their families or money that they are not getting because they are on a fixed income, particularly in cases of seniors where they have high medical costs and other priority money matters, not only are you depriving them of the money but in many cases these seniors and these families find out when the problem is not fixed correctly and they have to take it down the road to another shop, they find out that they have been ripped off, and it is an awful feeling.

It is a terrible feeling because it just—it picks at your trust and makes you feel ever-increasingly vulnerable. You lose your trust in

the system, and I think it is just a terrible thing to put anybody through. I think devastating moneywise, devastating esteemwise, and it is just something that no one really should have to experience.

Senator BRYAN. Ms. McCarthy, did any of this which was—as I have said, I thought was extraordinarily well done—generated any interest for State legislative initiatives along the lines, say, of Attorney General Abrams and perhaps what Attorney General Del Tufo has in New Jersey?

Ms. MCCARTHY. It sure has. In fact, on the State level we do have proposed legislation. I wish I could tell you what the specifics of that is right now. We are waiting to receive a copy of that. I still believe it is in the hands of our legislative counsel, but it is being drafted and it would address some of these problems. And again, I think that was all part of the response that we received.

I know Assemblyman William Patrick is working on that effort, as well as others, and we are looking forward to seeing what they do come up with.

Senator BRYAN. Well, I commend you personally, and compliment the station. It is in the highest traditions of journalist public service, in my judgment, I mean, to see that, kind of puts it all in perspective, and any one of us could identify with any one of those people coming in with a transmission.

Ms. MCCARTHY. I think we have all been there.

Senator BRYAN. We have all been there. And some of us, I suspect, not only have we been there but perhaps unknowingly we have been had.

Ms. MCCARTHY. I have got to tell you, the week after this aired I took my car in and, just real briefly, the mechanic at this shop was under my hood. He said, "Can I please check your oil?" I said, "Please, by all means do." He could not find the dipstick. This is a Toyota Corolla. He must have spent 5 minutes out there because he did not want to come back and tell me he could not find it. But the funny part of it is I could not find it either, it was so hidden in the engine there. And I thought, this is so ironic. These cars are getting so increasingly complicated if you cannot find your dipstick. That is ridiculous.

Senator BRYAN. I wonder what the flat-rate manual says about that? Thirty minutes to find the dipstick.

Ms. MCCARTHY. I just thought I would throw that in.

Senator BRYAN. Mr. Johnson, if you know, I am kind of intrigued by the local laws relating to this problem. I mean, yours is obviously a metropolitan county, highly sophisticated. To what extent do other communities or counties in America, if you know, in effect embellish, add to, the provisions that may exist at the State level to provide this extra measure of protection for the consumers that you in Montgomery County do?

Mr. JOHNSON. There are many cities and counties that have consumer protection agencies similar to ours. But in terms of special statutes on auto repair, as far as I know, there may only be a handful in the country on a local level. One I know of, I believe, is Dallas, TX. And we find it helpful.

You can do a lot of the things we do under basic consumer protection statutes, but having a specific auto repair statute, we dic-

tate many things that are in the invoices. Our disclosure requirements go beyond those I described in the State law. The licensing program, those kinds of things are great on the local level, I think, and should be done more.

Senator BRYAN. Mr. Johnson, were you there when the ordinance was adopted? Were you part of the program?

Mr. JOHNSON. No, I was not. I have been there 5 years, and that ordinance was one of the first projects of the office which was founded 20 years ago, so we have had that a while.

Senator BRYAN. I ask the question in this context, if you know, was it argued at the time that the board of supervisors, the county commission—excuse my ignorance of not knowing the political structure in Montgomery County—but as they embarked upon this ordinance, was the argument made that there has been action at the State level, and therefore you are preempted at the county level from going further. Anecdotally, or from what you know, did any of that debate occur at the time the ordinance was enacted?

Mr. JOHNSON. I believe that our ordinance was adopted before the State statute.

Senator BRYAN. I see.

Mr. JOHNSON. Montgomery County, in this State, has been a leader. We hear that kind of argument on various items of interest to us now on a regular basis.

Senator BRYAN. Because I would assume that a State that had a statute that purported to address any aspect of this problem, I am sure that the argument would be made, if the local authorities wanted to go further, that the State legislature has already spoken to the issue and thereby have effectively preempted local government action. If your ordinance predated, then obviously, the pre-emption argument could not be advanced.

Mr. JOHNSON. We do hear it in other contexts.

Senator BRYAN. OK. Well, let me again thank both of you for joining us here today, particularly Alyson, for sharing that film footage with us. We wish you, Mr. Johnson, the very best as you labor on behalf of the consumers in Montgomery County.

Mr. JOHNSON. Thank you.

Ms. MCCARTHY. Thank you very much.

Senator BRYAN. Thank you.

[Whereupon, at 11:28 a.m., the hearing was adjourned.]



## APPENDIX

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### PREPARED STATEMENT OF LAWRENCE S. HECKER, CHAIRMAN, MAINTENANCE AWARENESS PROGRAM

Good morning Mr. Chairman. My name is Lawrence Hecker and I serve as Chairman of the Maintenance Awareness Program (MAP) and President of the Automotive Parts and Accessories Association (APAA). I'm here today to outline the steps that the automotive repair industry has initiated since your hearing in July to better address the issues of our industry. These include developing vehicles for better communications with customers, working with regulatory agencies, and dealing with other problems within the industry.

Last year, when several states took action against Sears and other repair outlets, it became more apparent to members of our industry that problems that existed between repair outlets and their customers needed to be addressed. Many of those problems centered around the issues of poor and incomplete communications between the consumer and repair outlet.

It was then that Sears' Chairman Edward Brennan took the lead, and through the organizational efforts of APAA, orchestrated a meeting of key industry representatives to seek solutions. At that meeting, understanding the need for improvement, a number of automotive retailers and suppliers, with Sears at the lead, initiated the Maintenance Awareness Program (MAP).

MAP operates as an adjunct to the Automotive Parts and Accessories Association drawing participation from automotive repair retailers, independent repair facilities, automotive parts and accessories manufacturers, car companies, trade press and the associations which represent each of these groups. MAP has already begun to talk with regulators who work with the auto service industry to form a working partnership, in an effort to develop better, more effective communications between industry and buyers of automotive service.

We recognize that often a major frustration of car owners is their inability to consistently feel comfortable with the maintenance and repair work on their vehicles. One of MAP's goals is to improve quality and consistency in the auto repair industry. We also intend to provide motorists with sufficient and understandable information about their vehicles so that they can make informed choices as to the level of repair and/or maintenance they wish their vehicles to receive. This will result in consumers receiving fair value for their dollar.

MAP accomplishes its work through its six industry subcommittees. The process reflects our desire (1) to develop practices for our own people as they inspect and service their customer's automobiles and light trucks, (2) to educate consumers on the importance of regular inspections and of performing preventive maintenance on their vehicles, and (3) to educate those consumers who are interested in the proper way to perform those inspections and maintain their own vehicles.

The first subcommittee, the Uniform Inspection Procedures Subcommittee, is developing guidelines for the inspection of each of the eight major component systems of the automobile to be used as a check list by industry personnel. Our plan is for all participating shops to have and use this checklist. A vehicle owner frequenting any of these retailers will be assured, thereby, of uniform inspection practices.

But MAP's commitment to excellence in the inspection process does not end there. We are also working with the mechanic/technician certification organization, A.S.E., to develop and administer qualifying tests for service advisors and inspectors that we intend will be incorporated into an industry-sponsored certification process.

Since it would not be fully effective for industry to effect these inspection processes on its own, we have initiated contact with the Task Force created by the National Association of Attorney's General and will submit those guidelines our committee develops for their consideration and adoption as model inspection guidelines in each of the fifty states.

A second subcommittee, the Consumer Preventive Maintenance Committee, has as its main objective to increase the level of awareness consumers and drivers have

about the need for regular, preventive maintenance of their vehicles. A uniform preventive maintenance checklist is being developed by the committee to help consumers determine what needs attention on their cars—and when.

We are also working with the Car Care Council, the U.S. Department of Commerce and the Consumer Information Center at Pueblo, Colorado to develop and distribute a consumer guide entitled "Under the Hood and Around the Car". In addition to being distributed by the automotive industry, we plan distribution through the Consumer Information center, and other government agencies.

The Consumer Education Subcommittee is developing an interview process to identify the needs and perceptions of motorists-seeking more information concerning auto repair. It is also developing the educational segment for a consumer exposition which will instruct motorists regarding the maintenance needs of their vehicles and how to render proper care.

The Industry Preventive Maintenance Subcommittee is developing uniform preventive maintenance checklists for service personnel to use when recommending preventive maintenance to consumers and, equally important, guidelines for communicating the basis and benefits of those recommendations to the consumer. We have looked at many of the checklists presently in use throughout our industry, and are attempting to combine the best features into a standard industry checklist for each of the major systems on a modern vehicle. Where possible, we will include diagrams of the systems for use by the service advisor in discussing recommendations with the consumer. Most importantly the checklists will indicate whether the basis of the recommendation is for preventive maintenance, performance improvement, or is mandatory due to failure of a part or a system.

The Proactive Issues/Liaison Subcommittee maintains contact with consumer groups and governmental administrative agencies for the purpose of establishing on-going cooperative relationships.

The Image Enhancement Subcommittee has developed a program to enhance the image of the aftermarket service specialist by developing a profile of the ideal professional specialist and is seeking to identify individuals who exemplify that ideal. In addition, this subcommittee will develop materials which can be utilized by vocational instructors to improve the quality of communications that take place between service advisors and customers. The image we strive for is that of a professional service advisor/technician dedicated to customer satisfaction and properly serviced vehicles.

Attached to my testimony is a more complete summary of Subcommittee Goals and Objectives. In summary, some of the particular action items which may be of interest to you include: (1) the development with A.S.E. of a certification category and examination for service advisors and inspectors; (2) a set of preventive maintenance and inspection guidelines for each automotive system which we will seek agreement on from regulatory agencies so that they may be used industry wide; (3) an acceptable self-policing procedure in order to enforce uniform standards throughout the industry thus earning the acceptance of regulators and consumers and; (4) development, in cooperation with the Consumer Information Center and the U.S. Department of Commerce, of a consumer guide for distribution through the Center at Pueblo, Colorado through various other governmental consumer offices and through our industry.

We feel that the strength of the Maintenance Awareness Program is that it represents our entire industry and not any individual company or segment of the industry. As an umbrella organization, we hope to work with consumer groups and governmental agencies to publish material that looks at preventive maintenance and car care from the consumer's viewpoint and not from the perspective of selling any particular product or service. We are anxious to work with regulators at all levels to agree on standards and to enhance communications with our customers, who are also the constituents that hold government accountable to protect them.

Mr. Chairman, this completes my prepared testimony. Once again, thank you for the opportunity to inform you and your committee of our efforts.

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PREPARED STATEMENT OF DAVID F. SNYDER, SENIOR COUNSEL, AMERICAN  
INSURANCE ASSOCIATION

Each year, automobile insurers pay more than \$22 billion for repair or replacement of motor vehicles. As one of the largest consumers of auto repair services, insurers and their policyholders have a shared interest in holding the line on auto repair costs and deterring auto repair fraud. While the hearings of this Committee have been directed toward auto repair fraud as it affects individual consumers, re-



pair fraud and higher than necessary costs also affect automobile insurers and their policy holders in a direct and financially significant manner.

On behalf of the American Insurance Association, I am pleased to provide these comments on this important consumer/insurer issue. The Association represents 250 insurers, which provide private passenger automobile insurance and one third of the country's commercial automobile insurance.

#### THE COST OF AUTO REPAIR IS AN IMPORTANT INSURANCE AND CONSUMER ISSUE

According to data issued by the National Association of Insurance Commissioners (NAIC) in 1991 Profitability Results for Automobile Insurance, insurers paid out roughly \$20 billion in physical damage claims (claims for repair or replacement of motor vehicles) and related expenses under private passenger automobile insurance and more than \$2.2 billion in commercial automobile insurance physical damage claims and related costs. While injury costs outweigh motor vehicle repair and replacement costs, these claims are almost one half of total automobile insurance losses and related expenses.

ISO/NAII Fast Track Data is a continually updated sample of paid claims used by insurance regulators and insurers to examine trends in losses. According to this data, the average property damage liability loss cost per insured car has increased 27.6 percent; the collision loss cost has increased by 11.8 percent and comprehensive loss cost has increased 52.6 percent, from 1985 through the end of 1992. Loss costs have two components: frequency, or the number of claims per 100 insured cars, and severity, or the average amount paid per claim.

Partly as a result of the accident prevention measures enacted by the Congress, as well as other public and private efforts, there has been a decline of 14.6 percent in the frequency of property damage liability claims and 22.2 percent in the frequency of collision claims. Comprehensive claims frequency however, has increased 9.33 percent, reflecting, we believe, growth in auto theft.

Despite the relatively positive data on the frequency of claims, the severity, or the average amount paid for each claim, has increased significantly. From 1985 through the end of 1992, the average property damage liability, collision and comprehensive claim severity have increased 27.6 percent, 43.8 percent and 40.1 percent respectively. Thus, the average cost of each physical damage claim has risen substantially over the years, resulting in higher average claims payments per insured car.

The cost of auto repair to the average insurance consumer is documented by another NAIC report, Automobile Insurance Database (January, 1993). Nationally, the average collision insurance premium was \$206.16 and the average comprehensive premium was \$103.92, nearly one half of the combined average total auto insurance premium of \$686.47. Thus, in the aggregate, and on an individual basis, auto repair costs are important to insurers and insurance consumers.

#### INSURERS ARE ENGAGED IN MANY ACTIVITIES TO CONTAIN THE COSTS OF AUTOMOBILE REPAIR AND FRAUD

Insurance companies, individually, and in cooperative efforts employ a variety of measures to help fight fraud and contain the costs of auto repairs using their economic clout for the ultimate benefit of consumers.

To detect and deter fraud, insurers are engaged in a number of activities. Insurers train claims personnel to recognize potential fraud. Many insurers also have Special Investigation Units which review claims files to focus on cases where the charges, or the claim itself, appear to be out of line. These files get special attention, are investigated and are forwarded for civil or criminal action.

Insurers inspect vehicles before, during and after repair work, where allowed, to assure that the damage did not pre-exist the accident, that the work ordered was in fact done and that no additional work was done. Insurers also sponsor data bases to assist law enforcement and help the industry fight fraud. In the public arena, insurers support federal and state policymakers who advocate cost control and anti-fraud legislation. An example of this is the Anti-Car Theft Act of 1992, passed by the Congress last fall.

To control costs, some companies use computerized data bases to determine the reasonable cost of repairs. The insurer then authorizes payment for the pre-determined value of the designated repairs. This helps prevent overcharging.

Some insurers, where permitted by state law, maintain a list of shops which they recommend to consumers. These shops have been found to do high quality work at a reasonable price. Claimants may take their vehicles to any shop they choose, but if they go to a non-recommended shop, they will be paid only the amount the recommended shop would have charged for the repair, similar to preferred provider organizations in the health care field.

The public supports these cost containment efforts. A December 1992 Public Attitude Monitor indicated a 66 percent level of support for an insurer paying only the amount agreed to with the preferred provider. See Attachment 1.

Insurers also support efforts to maintain competition in repair parts, against efforts to eliminate aftermarket repair parts. The cost of aftermarket parts can be substantially less than equivalent parts made by the original equipment manufacturers. If after market parts competition is eliminated, the cost of auto repairs will skyrocket. So, preservation of this competition is essential to cost control.

There are, however, potential obstacles to insurer cost containment efforts. In some states, automobile insurers can be effectively barred from looking at a vehicle while it is being repaired. Laws are being advocated by some special interests to prevent insurers from holding down repair costs by mandating insurers to pay whatever a repair shop charges, for example, for glass repair. Finally, legislative, litigation and foreign trade initiatives have been pursued to curtail competition in repair parts by eliminating after-market parts. So far, most of these measures have not succeeded.

#### ONE ACTION THE FEDERAL GOVERNMENT CAN TAKE TO ASSIST IN CONTAINING REPAIR COSTS AND FIGHTING REPAIR FRAUD

One of the best ways to fight repair fraud and costs is to prevent the damage, in the first place. A recent Insurance Institute for Highway Safety report documented costly and unnecessary damage that occurs in low speed crash tests: at 5 mph, some cars sustained more than \$2,000.00 damage. Damage at such low speeds unnecessarily increases costs and creates opportunities for fraud, because in many cases, the car, if properly designed, wouldn't be in the shop at all. See Attachment 2.

Existing law (15 U.S.C. 1911 et seq.) authorizes the National Highway Traffic Safety Administration (NHTSA) to promulgate standards to eliminate or substantially reduce vehicle damage or to substantially reduce the cost of repair after damage has occurred. Despite this wide-ranging authority, current NHTSA regulations at 49 CFR Part 581, only govern collisions at 2.5 mph or less. This, by any reasonable measure, is an inadequate use of the authority delegated by the Congress.

The National Highway Traffic Safety Administration (NHTSA) should be encouraged by the Congress to fully implement its bumper strength regulatory authority, in consultation with consumers, insurers and auto makers. Such action could significantly reduce auto repair costs and opportunities for fraud. We believe many consumer groups would also support this action.

#### CONCLUSION

Auto repair costs and fraud are a major and shared concern of insurers and insurance consumers. Cooperative action, at both the federal and state levels, is needed to contain costs and deter fraud.

[Attachments 1 and 2 may be found in the committee files.]

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